

[Dr. V. K. John]

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granted under sub-clause (1) of Clause 2 of the Bill shall be deemed to be permission granted by the Commissioner, Corporation of Madras, the municipal council, the district board or the panchayat, as the case may be, under the Madras City Municipal Act, 1919, the Madras District Municipalities Act, 1920, the Madras District Boards Act, 1920, etc. We are made to take responsibility for a Bill which is unnecessary and which is very bad in form."

MR. CHAIRMAN :—" The question is—

' That the Madras Installation of Oil Engines (Temporary Permission) Bill, 1954 (L.C. Bill No. 9 of 1954), be passed into law.' "

The motion was carried and the Bill was passed into law.

(2) THE MADRAS HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS (AMENDMENT) BILL, 1954 (L.A. BILL NO. 27 OF 1954).

* THE HON. SRI B. PARAMESWARAN :—" Mr. Chairman Sir, I move—

' That the Madras Hindu Religious and Charitable Endowments (Amendment) Bill, 1954 (L.A. Bill No. 27 of 1954), as passed by the Assembly, be taken into consideration at once.'

" The Joint Select Committee which went into the Bill was appointed by resolutions of the Legislative Assembly, dated 18th and 19th May 1954, and a resolution of the Legislative Council, dated 18th May 1954. The Joint Select Committee after a careful scrutiny of the various clauses of the Bill did not consider it necessary to introduce any drastic changes therein. I shall briefly indicate the important changes in the Bill made by the Joint Select Committee and by way of certain amendments passed by the Legislative Assembly.

" *Clause 5 of the Bill.*—Sub-section (1) of section 30 of the Act declares the right of the trustee of a religious institution to incur expenditure out of the funds in his charge for securing the health, safety and convenience of disciples and pilgrims, for the training of archiakas, etc. Sub-section (2) of section 30, however, requires that in incurring the expenditure, the trustee shall be guided by the general or special instructions which the Commissioner or the Area Committee may give. The Supreme Court held that the provision in sub-section (2) constituted an unreasonable restriction on the right of the trustee. Clause 5 of the original Bill, however, thought that a total omission of the sub-section was not called for and decided that it was sufficient to substitute for the words ' the trustee shall be guided by ' occurring in the sub-section, the words ' the trustee shall have due regard to '.

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“ Clause 6 of the Bill.—Clause 6 of the Bill substitutes a new Section 31 which provides for the *cypres* application of surplus funds of religious institutions. The new section follows the language of Section 47 of the Orissa Hindu Religious Endowments Act, 1939, which has been held to be valid by the Supreme Court. The section as drafted was, however, capable of the interpretation that it authorized the Commissioner not only to divert the surplus funds of institutions but also the amounts of the endowments themselves. The Government amendment to Clause 6, as passed by the Assembly, has removed the scope for this interpretation by omitting the words ‘the amount of the endowments or’ occurring in the clause.

“ Clause 7 of the Bill.—It introduces a new Section 31-A. The object of this section is the validation of appropriation of surplus funds made in the past for religious, educational or charitable purposes prior to the judgment of the Supreme Court. Such validation is absolutely necessary to avoid administrative difficulties. Clause (1) of new Section 31-A as originally drafted did not convey the meaning quite clearly. The re-draft of the clause as passed by the Assembly states the intention more clearly.

“ Clause 9 of the Bill.—Section 39 (2) of the Act provides that where an institution has both hereditary and non-hereditary trustees, the Commissioner can appoint non-hereditary trustees as and when vacancies occur. Clause 9 of the Bill seeks to meet the objection raised to this section by the Madras High Court by providing that the Commissioner may appoint non-hereditary trustees only in cases of mismanagement and that too only after giving due notice to the hereditary trustees and after holding an enquiry. This clause as first drafted specified certain circumstances in which the Commissioner could hold that the hereditary trustee or trustees were not discharging their duties properly. The circumstances specified are (a) the distance between the trustee's residence and the institution, (b) the pre-occupation of the trustee with his private or other public affairs and (c) the incapacity or discrimination of the trustee to attend to the routine of management. The Joint Select Committee, after due consideration, resolved that the reasons referred to above should be deleted and that provision should be made requiring the Commissioner to give reasons for his decision to appoint non-hereditary trustees. The Committee also decided to make a provision allowing an appeal to a court of law against the Commissioner's decision.

“ Clause 10 of the Bill.—Section 52 of the Act specifies the grounds on which a suit can be filed for the removal of a trustee of a math or specific endowment. Clause 10 of the Bill sought to introduce certain additional grounds, viz., ‘waste of funds’, ‘adoption of devices to convert the income of the institution into *pathakanika*’, or ‘leading a life inconsistent with the sanctity of the office’. The Committee resolved to substitute for the proposed ground ‘leading a life inconsistent with the sanctity attached to

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the office', the ground 'leading an immoral life or otherwise leading a life which is likely to bring the office of the head of the math into contempt'.

" Clause 15 of the Bill replaces the existing Sub-sections (1) and (2) of Section 76 of the Act, thereby meeting the objections raised by the Supreme Court. According to the new sub-sections the contributions shall be payable not to the Government but to the Commissioner, who by Clause 16 of the Bill, is being constituted into a *Corporation sole*. It is considered that Section 76 (1) should make it clear that the contributions shall be for defraying the expenses incurred by the Government and their officers on the services rendered to religious institutions. The clause has been amended to bring the intention clearly.

12-40 p.m. " Under Section 3 (a) of the Hindu Religious Endowments Act, 1926, there was a provision empowering the Government to exempt from the liability from contributions maths (and specific endowments attached to them) whose annual income was less than Rs. 400 and temples (and specific endowments attached to them) whose annual income was less than Rs. 200. There is no such provision in the present Act. It is considered desirable to exempt from contributions both maths and temples getting an annual income of less than Rs. 200 and an explanation to this effect has been inserted under Section 76.

" Under Clause 16 of the Bill, a fund to be called the Madras Hindu Religious and Charitable Endowments (Administration) Fund shall be created which shall vest in the Commissioner. The contributions and audit fees payable under Section 76 (1) and (2) shall, when realized, be credited to this Fund. It is considered that if there is any surplus in the Fund after meeting the expenditure under Section 76 (4), the Commissioner may be empowered to make grants out of the surplus to poor and needy religious institutions for repairs to or renovation of their buildings subject to such rules as may be framed by the Government in this regard. A new Sub-section (5) has accordingly been inserted under Section 76."

MR. CHAIRMAN :—" Motion moved—

' That the Hindu Religious and Charitable Endowments (Amendment) Bill, 1954 (L.A. Bill No. 27 of 1954), as passed by the Legislative Assembly, be taken into consideration at once.' "

* SRI K. BALASUBRAMANYA AYYAR :—" Mr. Chairman, Sir, this Amendment Bill has been introduced on account of the fact that the Supreme Court of our Union has declared certain sections of the Madras Hindu Religious and Charitable Endowments Act of 1951 as void and repugnant to the provisions of the Constitution of India, because the fundamental rights guaranteed under the Constitution to various heads of maths and trustees of temples and other religious denominations are affected. The

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Government have introduced this Bill for that purpose. My first submission is that if they had confined their attention only to those provisions of the Bill which have been declared to be void and brought in consequential amendments to the various other provisions, it would have been quite all right. But, as a matter of fact, what they have done is that they have introduced some new provisions also. They themselves stated at the time of the Joint Select Committee meetings that they might think of having a comprehensive legislation. I am not one who is enthusiastic about a comprehensive legislation introducing more drastic provisions than the present one. That is why I adopt a lukewarm attitude so far as that question is concerned. But, if the Government propose to bring in a comprehensive legislation, all the new provisions can very well be introduced in that Bill and the public would then have time to consider the whole matter and offer their opinion. Unfortunately now, as they have introduced new provisions, necessarily we had to take some time in considering them and we did take some time. But I am sorry to mention here that the time given for discussion during the meetings of the Joint Select Committee was not satisfactory so far as I was concerned. The proceedings went on in a great hurry. That is what I felt. May be that we were wrong to some extent in not having pressed the Government so strongly that they could have waited for some more time. But things have happened and I do not want to make any complaint. Yet the fact remains that this Bill had been introduced rather quickly and people had no time to offer their opinion.

"I wish to submit that this Bill bristles with difficulties. Fundamental rights affecting religious denominations and religious trusts, which have been in existence in our country for the past 2,000 or 3,000 years, are involved. There are customs, usages and so on. There are so many complications that it is very difficult for any Government to bring in a comprehensive Bill which would satisfy all, especially after the judgment of the Supreme Court had been delivered laying down the rights of the heads of the maths and so on. All these things should be gone into carefully and it will take a lot of time. Judicial attention has to be bestowed and the law has to be looked into carefully. I am not one of those who blame the Government if they commit mistakes. If they commit mistakes, it is out of ignorance, and not otherwise.

"They have introduced a provision as regards the utilization of the surplus funds, called *cypres* application of surplus funds of endowments. This new provision is sought to be substituted for Section 31 of the principal Act. I am not speaking on those provisions which incorporate only formal amendments. When the clause by clause discussion comes up, I will speak about them. I will now deal with the new provisions. There was originally a section—I remember, Section 30—which related to the *cypres* application of surplus funds. But the Supreme Court held that they were not satisfied as regards the validity of that section. That

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section was ordered to be deleted from the Act. But now they have introduced another provision, namely, Section 31. Unfortunately, in our country, how can we find any surplus funds at all which can be diverted for other purposes? Our religious institutions have been working for thousands of years. There are no specific purposes mentioned in specific grants. The whole thing has to be considered from the usages of the institutions and from various general grants as shown by inscriptions and from other evidence. Therefore, nobody can say that it will adequately satisfy the purposes of the religious institutions. Well, what are the purposes? The purposes are so general, vague and wide. Are we really satisfied with the administration of all the temples? No. Sufficient funds are necessary for administering these temples and other institutions useful to the public so that the character of our people and the religious and spiritual nature of our people are improved. How can any officer, however high placed he may be—for example, the Commissioner who occupies the place of His Holiness the Pope under the present Act—decide that there is a surplus which is not required for purposes of the religious institution? Why should not the surplus be carried over to the next year's Budget? There may be difficulties in the next year and more funds may be required. Nobody can really say that he is adequately satisfied with the purposes of the religious institution. Generally, as we all know, the *cypres* application is applied to trusts which have failed or have become incapable of realization. Even assuming that the *cypres* doctrine can be invoked in the case of surplus funds, how can one say that the purposes of the religious institution have been entirely fulfilled? There are thousands and thousands of institutions which are languishing for want of funds and even big institutions have not fulfilled their entire objects. Whole structures are being dismantled and are going to ruins. Lakhs and lakhs of rupees are required and people are contributing as a token of their charity. When such is the case, I fail to see how the State can contemplate this measure in the case of our religious institutions? Take our maths, for instance. How much money is required for propagating our religion? We are a huge population. Most of us are Hindus and there have been attacks against our religion from all sides. We want to have enlightened spiritual instruction in the tenets of our religion so that the character of the people may be improved, based on their belief in religion. Therefore, a lot of money is required by mataphipatis for these purposes.

12-50 p.m. “How many lakhs of rupees would the Government require if they want to discharge efficiently the duties of that office? Considering the general nature of the religious trusts in our country, I say that the State cannot contemplate performing the duties of that office adequately. Nobody who is true to the religion in which he is born would say that the State can do that. People who do not care for religion, who are secular minded or others who care very little for what happens to our religious institutions may say

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all these things. They may look upon it with equanimity. We cannot. After all it is the Government that stand to gain by our people being entirely religious minded. If our people are religious minded, if they are spiritual, many of the legislations will become quite unnecessary. This is the view I take in this matter and I feel that this section which has been introduced, section 31, gives wide powers to the Commissioner. Even the word 'trustee' is not there. He need not hold consultations with the trustees."

* SRI K. BHASHYAM :—" You can appeal against the decision of the Commissioner."

* SRI K. BALASUBRAMANYA AYYAR :—" Yes, we can appeal and go to the High Court and all that. But the funds would be utilized for the purpose of paying the lawyers. The Commissioner has been given wide powers. That is my submission so far as this section is concerned."

" As regards validation of past acts, this is writ large in all our legislation. Wherever we go and wherever we turn, there is only validation, validation and validation of illegal acts, which were going on. All the fees that have been collected so far, the Government had no power to collect. We are validating things which were declared illegal twice and thrice by courts. Therefore, I submit we cannot go on validating things that have been held illegal. Even if there are administrative difficulties, as far as possible, we should avoid making things legal which have been done illegally. That is my submission so far as this matter is concerned."

" Regarding Chapter VI, ' Probates, Letters of Administration and Certificates of Administration ' the whole of that chapter has been declared void by the Supreme Court. I do not want to read the pronouncement of the Supreme Court on this matter. The Court has observed that this chapter is so drastic in character that it cannot but hold it void. The Advocate-General of Madras was right in saying that he cannot support this chapter. Now what is it that the Government have done? Clever lawyers are behind them, and the Government say : ' Yes, the judgment relates to maths and therefore all these observations must relate only to maths. So far as maths are concerned, we will leave them out of question, but so far as temples are concerned, we will still have the power of notification.' The Supreme Court has pointed out that courts have been entirely banned so far as this notification is concerned and therefore they took a serious view of this matter and held the chapter itself void so far as religious institutions are concerned. Because that appeal was concerned with a math, they said maths should not be affected by this chapter. Now the Government want to construe this pronouncement differently and say : ' So far as maths are concerned the judgment of the Supreme Court is all right. We have now introduced a provision to the effect that nothing in this chapter shall apply to maths or hereditary institutions having a beneficiary income '. In fairness to the

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judgment of the Supreme Court and the feelings of our people, I say the whole of Chapter VI should be deleted. If the Government do not do that, then we shall have to resort to litigation again and go to the Supreme Court and ask that Court to give their final opinion. (Interruption.) Yes, the Government may again try to validate their action. I am sorry to say that it will not be in the best interests of the country. These are my submissions so far as the general provisions of the Bill are concerned.

“ Then coming to proposed Section 82 which validates all the things that have been done regarding contributions, it is illegal to do that. The Supreme Court has said that the Legislative Assembly and the Council had no power to impose the fee because they held that it was tax and not a fee. Our Legislature had no power to levy such a fee but all these years the Government have been collecting the fee which they had no power to collect. Therefore, the collection was an illegal exaction. I do not blame the Government because it is a difficult thing to say whether this is a tax or a fee. But it has been held to be a tax and an exaction. How then can the Government validate such exactions? Under Section 82, Government want to validate such collections because of administrative difficulties. The man who has got his fundamental rights does not care for the administrative difficulties of the Government. So long as his fundamental right is infringed and so long as the Government have collected the fee from him which cannot be levied because the Legislature has no power to levy such a fee, then the fee collected has to be refunded to him. By what arrangement the Government will refund the money collected is not his concern. Therefore my submission is that there can be no such section as this. We need not in this Bill try to introduce new principles and clauses which have to be further considered. Let us have only the clauses which accept the decisions of the Supreme Court and give effect to them, such as omitting certain sections or amending certain other sections of the original Act as a consequence. As far as other things are concerned my submission is, we must postpone consideration of those Clauses to a later date especially in view of the fact that a comprehensive Bill on this subject is coming up before us. That is all my submission on the general principles of the Bill.”

MR. CHAIRMAN :—“ The House will now adjourn and meet again at 2-30 p.m.”

(After lunch—2-30 p.m.)

* SRI V. BASHYAM AYYANGAR :—“ Mr. Chairman, Sir, I wish to make a few observations on this Bill. First of all, in the Statement of Objects and Reasons given in the Bill, it is stated that this Bill is occasioned by the decision of the Supreme Court which held that some of the sections of the Madras Hindu Religious and Charitable Endowments Act, 1951, were invalid as being repugnant to the Constitution. Now, Sir, this Bill goes much

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farther than what is contained in the Statement of Objects and Reasons. If the Bill had confined itself to remedying certain defects pointed out by the Supreme Court, it would have been less open to objection. But, as a matter of fact, it introduces provisions which have nothing to do with the judgment of the Supreme Court. The most objectionable of such provisions is the one which relates to the doctrine of *cypres*, which has been newly introduced in this Bill. That provision was not in the old Act and it has been introduced now under the cover of remedying the defects pointed out by the Supreme Court. I beg to submit that it is not proper for the Legislature to introduce such an important provision in a Bill which is intended, according to the Statement of Objects and Reasons, for a different purpose altogether.

“ Sir, the proposed Section 31 which deals with the *cypres* doctrine is very drastic. As my hon. Friend, Mr. Balasubramanya Ayyar has already explained, Section 31 relates to the disposal of surplus in charitable and religious institutions. I think along with him that ordinarily there could be no surplus in charitable and religious institutions. The scope of what has to be done for these temples and for the cause of religion and propaganda is so vast indeed that it is not possible to conceive that there could be any surplus in any of the temples in our State. So, the application of the *cypres* doctrine will become absolutely unnecessary. What, in practice, the introduction of the doctrine envisaged in this Bill will lead to is that it will tend to influence the authorities concerned to declare a surplus even when there could really be no surplus. That will be the tendency. Any religious institution, whatever its income, could and ought to spend it for its reasonable needs. As hon. Member Sri K. Balasubramanya Ayyar has pointed out, difficulties are there and all temples are crying for want of funds and they do not have any surplus. Of course, it will be possible to create a ‘surplus’ by curtailing unduly expenditure under a legitimate heads. That is however improper. Sir, this section is also very vague because it gives absolute power to the Commissioner to declare not only a surplus but also the purposes for which the surplus could be used. To introduce such a provision in a Bill which is intended to remedy the defects pointed out by the Supreme Court is not justifiable.

“ Sir, I would respectfully submit that the Government have to be very conservative in dealing with our religious institutions. These institutions are very old, thousands of years old. They have affected the lives and conduct of the community and they have exercised a very great influence over the mass mind and they ought not to be easily interfered with. These institutions ought not to be allowed to become a sporting ground for active politicians and for persons who do not believe in temples and the ideals for which they stand. This has to be clearly borne in mind by the Government when they want to pass any law concerning the religious institutions. Otherwise, the effect will be very deplorable indeed. It will affect religious belief and the habits and customs

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of the people and its effect on the mass mind will be very considerable indeed. Sir, the great *Acharyas*, and leaders of Hindu religious thought took a lot of trouble to create belief and faith in the minds of the masses by teaching or preaching to them the sacredness of these institutions which they alone knew. Now to spoil the effect of all those institutions by a mere Act of the Legislature is not justifiable at all. No doubt, the Government of this State, as at present constituted, have the best interests of the religious institutions at heart and they do not want to make revolutionary changes. I would grant it. At the same time I will emphasize the need to be conservative in matters of this kind. Sir, we are living in days of democracy and we do not know what sort of Government will come into power and at what time or what attitude will be taken towards religious institutions. It may be that they could act in such a way as to deal with the funds of the religious institutions as they like. That is dangerous indeed. No doubt, the power is vested in the Commissioner but the Commissioner is only an employee of the Government, a nominee of the Government, and naturally he will only act as the Government are inclined. Therefore, the Government ought to be very careful indeed in dealing with these charitable and religious institutions.

2-40
p.m.

"Now, I come to the question of contributions dealt with in the Bill. The Supreme Court held that the contribution which was collected from religious institutions was a tax and, therefore, it was not justifiable. Now, what is done? The name of the 'contribution' is changed and then, instead of the contribution being made payable to the Commissioner, a fund called the Charitable and Endowment Administration Fund is created and instead of money being paid to the Government, it is paid to that Fund. Of course, for the services rendered by the Government, they are no doubt entitled to collect the necessary funds from the respective religious institutions. But, we do not know how much is spent for each temple and fixing the rate of contribution at a certain percentage is really inconsistent with the idea of payment for the expenses actually incurred in regard to a particular religious institution. It is proposed to collect 5 per cent. Supposing only 2 per cent is spent, what is to become of the balance of 3 per cent? How is it to be spent? I find that in the Joint Select Committee one of the Members suggested that the Commissioner must be empowered to spend the surplus just as he pleases for religious and charitable purposes. But, will this again be a judicious thing to do? Taking the view expressed by the Supreme Court into consideration, I think, the proper thing and the just thing for the Government to do will be to collect just what they incur on behalf of a religious institution and nothing more. How is this to be done? We know that in the matter of the collection of income-tax a person is assessed to income-tax on his income for the previous year and so on for the next year. Similarly, even here if the amount that is spent on a religious institution can be calculated for one year, only so much may be collected from it for the next year and so on, so that there need

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be no accumulation of funds in the hands of the Commissioner. Apparently, the Act does not provide how the moneys which accumulate in the Fund which is to be administered by the Commissioner are to be spent. We have got the example of the Railway Budget where the surplus, if any, is added to the general revenues. Here also, if money accumulates with the Commissioner, the tendency of the Government will be to appropriate it in some way or other for some purpose. I, therefore, think that the provision in this Bill regarding the contribution to be made is not at all correct. Also, the retrospective effect which is sought to be given to make all the invalid payments into valid payments requires explanation.

“ There are also other changes made in this Bill which need not have been made. I understand that in the Select Committee it was said on behalf of the Government that another Committee would be appointed to go into the whole question of these religious institutions. If that be so, I do not see any reason why these changes which are not necessary to meet the criticisms of the Supreme Court should have been introduced in this Bill. We may as well wait for the proposed Committee to go into the whole question and then proposals may be made for a comprehensive Bill on the subject.

“ Sir, I think that with reference to these two or three points the Government should stop and consider whether they have done the best thing in the circumstances. The Bill having been already passed in the other House, I feel that I am really speaking in an atmosphere of unreality. Whatever the hon. Members here may suggest may not have one in a hundred chance of being given effect to. I have only these few observations to make.”

* SRI T. M. NARAYANASWAMY PILLAI :—“ Mr. Chairman, Sir, at the outset I must congratulate the Government for having brought forward this Bill to amend the Madras Hindu Religious and Charitable Endowments Act, 1951, and rectify the defects pointed out by the Supreme Court. Objection has been taken by my hon. Friends, Sri K. Balasubramanya Ayyar and Sri V. Bashyam Ayyangar, on the ground that the Government have not confined themselves to merely rectifying the defects pointed out by the Supreme Court, but that they have introduced some new provisions. I feel that the changes in those directions are not so fundamental and, perhaps, have been made in the interests of better administration as I shall try to point out later on.

“ In regard to the scope of the changes that have been introduced, they may be broadly classified under three headings : (1) those necessitated by the decision of the Supreme Court, (2) those necessitated by the observations of the High Court and (3) those provisions felt necessary by the Government in order to give effect to some pressing needs. With regard to those changes

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necessitated by the decision of the Supreme Court, I crave your leave, Sir, just to mention what the Supreme Court has said. There seems to be a feeling among the general public that the Supreme Court has declared the whole Act as *ultra vires* and has placed a ban upon the Government bringing forward any legislation of this kind. It is rather unfortunate that in regard to this subject whenever legislation of this kind was brought forward, some sections of the public ranged themselves against it and tried to raise the cry that 'Religion was in danger'. If the judgment of the High Court alone held the field, perhaps, there might be a feeling among the public that there could be no use in bringing forward a measure like this. The judgment of the High Court would have paralysed the administration but, fortunately, the Supreme Court has held only certain sections to be invalid. The Supreme Court has stated broadly that in regard to madathipatis and hereditary trustees who have beneficial interest in the income, the Government have got the right to supervise and control them and it has held that Section 20 of the Act of 1951 is valid. At this place, I may just refer to the observations themselves:

'Section 20 of the Act describes the powers of the Commissioner in respect to religious endowments and they include power to pass any orders that may be deemed necessary to ensure that such endowments are properly administered and that their income is duly appropriated for the purposes for which they were founded. Having regard to the fact that the madathipati occupies the position of a trustee with regard to the math, which is a public institution, some amount of control or supervision over the due administration of the endowments and due appropriation of their funds is certainly necessary in the interest of the public and we do not think that the provisions of this section by itself offends any fundamental right of the Mahant . . .'

We, therefore, start with this, namely, (1) that the Government have got the right to see that these institutions including the maths are properly administered, (2) that their funds are properly appropriated, (3) that such administration must be in the interest of the public and (4) that the madathipati is a trustee. What we have to see now is whether the new changes that have been proposed go fundamentally against this declared policy enunciated by the Supreme Court. Viewed in that light I would submit that none of the changes brought forward by the Government—of course, I have some objections to a few of the amendments—are against the principle enunciated in this judgment. Take, for instance, Clause 3 suggesting substitution of a new section for Section 21 in the old Act. The Supreme Court held that the old Section was somewhat obscure and did not provide for the observance of the usages and practices of the institution by the officer making the entry. They also said that notice should 'e given to the trustees. These defects pointed out by the Supreme Court have been rectified in the Bill.

"Let us next take Clause 6 suggesting substitution of a new section for Section 31 of the old Act. Both hon. Members Sri K. Balasubramanya Ayyar and Sri K. Bashyam have spoken against the principle adopted in this section. In this connexion, we have

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to take into account the policy, the need, the growing consciousness of the community, the change in public opinion and several other factors and viewed in that light, the changes made in Section 31 (2) and (3) do not violate provisions of the Constitution. With regard to Section 31, the position is very clear. The whole thing has been considered by the Government and the present new section proposed in Clause 6 of the Bill has been drafted on the lines of Section 47 of the Orissa Hindu Religious Endowments Act of 1939 which the Supreme Court has held to be *intra vires*. The Government have given effect to the observations of the Supreme Court with regard to the old Section 31 and in enacting the new section, they have adopted a section held valid by the Supreme Court. I cannot see how the new Section 31 is repugnant to the provisions of the Constitution. Certainly it must be conceded that the new Section 31 gives effect to the observations of the Supreme Court. As regards the question whether the change effected is necessary and whether it is beneficial there may be differences of opinion. It is said that there are no funds available as surplus at all in any religious institution. I also believe that in the case of temples there could hardly be any surplus after providing for what is required under Section 70 (2), namely, making adequate provision for the *dittam*, the repair and renovation of the buildings connected with the institution, etc., and after providing for what is required under Section 30 (1), namely, on arrangements for securing the health, safety or convenience of disciples, pilgrims or worshippers resorting to the institution and for the training of archakas, adhyapakas, etc. Why should those who say that there can be no surplus, fight against the section, I ask? Let that section be a dead letter. I heard my hon. Friend Sri V. Bashyam Ayyangar saying that there might be a tendency to create an artificial surplus. If there are certain fundamental binding charges which are sanctioned by tradition or usage to be provided for and which cannot be got over even by the Commissioner or even by the Government, I ask, how can an artificial surplus be created? We must have faith in the Commissioner. Any person who is dissatisfied with the orders of the Commissioner can file a suit in a Court of law under this section. So, ample provisions have been made for setting right any imagined caprice, if I may so put it, on the part of the administration. Therefore, I for one have no serious objection to the amended Section 31. As there must be a co-ordinating and controlling authority, viz., the Commissioner, the new Section 31 will be very useful.

“I see no objection to Clause 11 which deals with the substitution of a new section for Section 55 of the old Act. This section deals with power to spend ‘*pathakanika*’. I first thought that the objection raised against this new section was valid. But after consideration I think that the new provision requiring the madathipati to keep an account for the receipts alone is not such a burdensome restriction put upon him. After all questions relating to

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these may crop up years after and if, after the lapse of a certain number of years, a subsequent madathipati or a trustee were to raise the issue of unauthorized appropriation from the *pathakanikas* by his predecessor, there must be some references to be looked into. I consider that the new section cannot be considered to be a burdensome restriction or an unnecessary restriction or a vexatious restriction interfering with the rights of madathipatis or trustees to deal with their income. These madathipatis or trustees can deal with their income only in accordance with the customs and usages of the institution, and that is what has been stated in this provision. At the same time, care has been taken to see that it is not made a cover behind which expenditure on nefarious items may otherwise be permitted to be made. That seems to be the object behind this Section and, I for one, do not object to it.

“ With regard to Clause 12 of the Bill dealing with the repeal of Section 56 of the old Act, the Government have scrupulously followed the instructions of the Supreme Court and those who object to this Bill must congratulate the Government.

“ Clause 15 dealing with amendment of Section 76 of the old Act causes a little bit of difficulty for me. I for one feel that the Government have not really taken us into their confidence with regard to the manner in which the difficulties pointed out by the Supreme Court have to be solved. The Supreme Court has held that the contribution under Section 76 (1) of the old Act has to be treated as a tax and that it is beyond the power of the Legislature to levy such a tax. One of the reasons they have given is that a tax can be levied only in the manner provided for under the various Articles of the Constitution. Care is taken to see that payment is made to the Commissioner instead of to the Government. A separate fund has been constituted. The question is, will that alone do? There are also two other observations made by the Supreme Court. They say that there should be correlation between the expenses incurred by the Government and the amount raised by contribution. If there should be a correlation between the income and expenditure, what is it that the Government are going to say with regard to the flat rate fixed in Section 76 (1), namely, ‘ pay to the Commissioner not exceeding five per centum of its income ’. I would suggest to the Government to consider whether it would not be advisable in the circumstances to lessen the rate of contribution with regard to maths and keep 3 or 4 or even 5 per centum as the rate of contribution with regard to temples. Here I see the wisdom of the late Raja of Panagal. There were three fundamental factors on which his Bill was formulated. One was the creation of a statutory board divorced entirely from the Government. This was a body distinct and separate from the Government and from the religious institutions themselves. Though Government servants might be appointed to that body, it retained its separate character. The third factor was that a contribution of 3 per centum from temples and 1½ per

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centum from maths was collected. The three per cent contribu- ^{3 p.m.}
tion from temples indicated that there were more services to be
done for them and the $1\frac{1}{2}$ per cent from the maths indicated
that there were less services to be done for them. At present
the old rates for all may not be enough. Three per cent from the
maths may be really necessary in the circumstances. For temples
a little more than 3 per cent, viz., 4 per cent may be fixed. The
exact rate may be arrived at after deciding the amount required
for expenditure. Anyway, there must be a kind of correlation
between the services rendered in regard to the classes of institu-
tions and the amount of contribution we take. That is one factor
which we should bear in mind. Secondly, there should be a feel-
ing that nothing more is collected than what is necessary for
the purpose of meeting the expenses. Section 69 of the old Act
sponsored by the Raja of Panagal contained this provision, namely,
that every religious institution, math or temple shall pay the
amount of contribution required for meeting the expenses of the
Board. No doubt, in this Bill we say 'in respect of the services
rendered by the Government'. I have some objections to the
presence of that phrase 'services rendered by the Government'. It
may well be changed into 'services rendered by the Commissioner'.
He is to be a 'corporation sole'. Then again there should be
differentiation with regard to the amount of contribution levied
from the various classes of institutions. Thirdly, Sir, this is what
I object to most seriously and I have given notice of an amend-
ment which I intend moving at the proper stage of the discussion.
It is this, namely, a new provision has been added by the Assembly
empowering the Commissioner to allot from this surplus fund,
if any, sums required for poor and needy religious institutions.
That *ipso facto* indicates that the Government contemplate the
collection of something more than what is necessary and therefore
a surplus. In fact there may be a surplus, but, if we already
begin to legislate for a surplus, then something would be said
when the matter is taken to a Court. Therefore we must make
it clear that nothing we do and say contemplates the existence
of any surplus. We may consider all these aspects in the compre-
hensive legislation. Let us not proceed in a hurry.

"There are also difficulties in the matter of administration.
As regards past collections, collections made after the passing of the
Act of 1951 would become illegal under the provisions of the judg-
ment of the Supreme Court. At the same time, everybody recognizes
that it would be impossible for the Commissioner or the Board to
refund these amounts. There is no reason why those institutions
should escape assessment merely because of the Supreme Court
judgment. What I wish to say is 'Let us not validate it. Let
us not give expressions to a view that we are passing
a provision in the teeth of the observations of the Supreme
Court'. The Commissioner must have lawful authority to levy
and collect the contribution for three years and then in case a
claim is set up for refund, he must have the authority to set it

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off. The amendment which I propose will be as follows: 'It shall be lawful for the Commissioner to levy and collect a contribution at the same rate as that prescribed in the previous subsection for the period during which the Act of 1951 has been in force and to set off this against any claim for refund of the amount paid as contribution on the ground that the payment was illegal in pursuance of the decision of the Supreme Court'. This provision, I think, will get over the difficulty which is felt in regard to the validation of past enactments. Therefore, in regard to those provisions which have been declared void by the Supreme Court, except with regard to Section 76 and the consequential provisions, I feel that the Government have done all that they could to remedy the defects pointed out by the Supreme Court. With regard to Sections 39 and 52 they have introduced new provisions. With regard to Section 39, I feel it is debatable and with regard to Section 52, the language employed may lead to some doubt. On the whole, the most fundamental provision seems to be Section 76. Without such a contribution, the administration could not work. Every care ought to be taken to see that in future the administration is allowed to collect the contribution peaceably and to appropriate it peaceably and no room should be given for anybody interested to go and question the contribution in a Court of law. Except for those sections, I really feel that there is not very much to be objected to in this Bill and I, for one, welcome the introduction of this Bill and I hope that the Government will take steps to remedy the small defects which I have pointed out above."

* SRI G. KRISHNAMOORTHY:—"Mr. Chairman, Sir, I beg to oppose this Bill with all the vehemence at my command. This Bill, in my opinion, is an attempt to tread on very delicate grounds. It is an attempt to tread on grounds that have stood the test of times for thousands and thousands of years. It is an attempt on the part of the secular Government to go against the convictions of the people, especially of a particular denomination called the Hindus. It is an attempt on the part of the Legislature to discriminate between one community and another community in a State called a secular State where we have a Constitution and special provisions under Articles 25 and 26. Article 26 clearly lays down: 'Subject to public order, morality and health, every religious denomination or any section thereof shall have the right to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to own and acquire movable and immovable property and to administer such property in accordance with law.' Now, the attempt on the part of the Hindus for the last so many years has been only to do all those things contemplated in this Article. They are maintaining religious institutions. They are owning properties which are administered in accordance with law. Somehow or other, when the Britisher was here, under Regulation 7 of 1817, the British administration took hold of the temples and other religious

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institutions. In 1842 and later in 1863 they thought it fit not to interfere with religion and then they thought of constituting a non-official Board. An Act was passed in 1925 and it was amended later in 1951. But after the introduction of the Constitution by which we rule ourselves, I do not know how far we are within the powers vested in us by the Constitution in setting up certain standards for institutions run by a particular religious denomination called the Hindus. Article 25 says clearly that nothing in that Article shall affect the operation of any existing law or prevent the State from making any law regulating or restricting any economic, financial, political or other secular activity. The word 'religious' does not find a place there. So, a secular Government can legislate in respect of religious institutions with regard to economic, financial and political or other secular aspects. The word 'religious' has been purposely omitted there to safeguard the rights of a particular denomination like the Hindus. Again, Article 30 lays down: 'All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice and the State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.' If we read together Articles 25, 26 and 30, it will be clear that the intention of the framers of the Constitution was not to interfere with religion at all. They wanted to promote religion. It has been said that a minority can administer an educational institution and grants cannot be refused to an institution simply because it is run by a minority. Freedom is given to the minority or majority or a particular religious denomination to run an institution and the State should not make any discrimination in granting aid to such an institution.

"Again they say we shall have freedom to follow a particular religion. Government cannot interfere with religion except in matters which affect the financial, secular, economic or political aspects of Government. But here by this Bill we want to wound the feelings of lakhs and lakhs of people who regard the head of a math as a person incarnate. By this Bill we want to make him, as the hon. Member, Sri Balasubramanya Ayyar, pointed out act as per the dictates of a Commissioner, a nominee of the Government. There will be this Commissioner over the head of this *Acharya* who has all along been regarded with reverence and worshipped by lakhs and lakhs of people. Is it right on the part of the Legislature and a secular Government to try to impose restrictions upon a particular denomination called the Hindu society?

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"I submit, Sir, that legislation of this type is not warranted after the introduction of the Constitution in our country. It might have been right, it might have been quite proper before the introduction of the Constitution, but it cannot hold water after the introduction of the Constitution. As I already pointed out, the

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head of a math is a person who is held in very high esteem by lakhs and lakhs of people. How is it that through this legislation we try to question the private life of the head of the math? We have gone so far as to introduce a provision saying that if the head of the math is found to be immoral and so on he can be removed, of course, with the help of a Court of law. Who is to go to a Court of law? The Commissioner can go or some two persons under the authority of the Commissioner can go to a Court of law. We fully know that no head of a math would brook the idea of going before a Court of law in order to defend himself and to continue in the post. To what state have we reduced the Hindu society, to contemplate the introduction of such a provision in a Bill and try to get it through a Legislature like this? Do we think that we can study the private life of any individual? Can my private life be studied by any individual except myself? Nobody can do that. My own conscience cannot do that easily. That being so, what about studying the private life of the head of a math? The provision authorizes a public man, a man in the road, not connected with the religion, to study the private life of the head of the math. This is a very serious thing which hon. Members of this House have to take notice of. Any petition under the authority of the Commissioner sent by two persons, adults over 21 years of age, will have the effect of driving the head of the math who has been held in very high esteem by lakhs and lakhs of people for thousands and thousands of years, to the Court. He will be made to stand before a Magistrate or District Munsif for the purpose of answering questions. This is something which ought not to be thought of by us at all.

“ Then there is the question of surplus funds. There were arguments for and against the fact that we can have surplus. I say there cannot be any surplus. I have yet to see a temple in South India, big Dravidian-style temples where the *gopurams* are renovated at the cost of the Government or at the cost of the temple funds without the aid of public subscriptions. Most of these *gopurams* are in a dilapidated condition. I think on the sacred floor of this House I put interpellations about the plants growing on the big *gopurams* of the Tiruvanaikaval and Srirangam temples. No action has been taken to remove those plants which are growing bigger and bigger. The endowment office is there. The trustees are there. They do not care to remove these plants. These are an eye-sore to the stranger who visits the temples. But perhaps familiarity might have made these people blind to these things. When they are not able to remove these plants, do the Government think they will renovate the *gopurams*? This will cost lakhs and lakhs of rupees. Of course, if the Government do not want to effect these improvements and renovate the *gopurams*, they can have a surplus out of these funds. But if they take up renovation alone, the institutions will be landed in deficits for hundreds and hundreds of years. We cannot talk then of a surplus at all. There are temples and temples in South India. What do

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we find? They are being allowed to decay. In olden days, we used to say that kings used to dig big tanks and build temples with the help of the mud dug out. Nowadays, it has become the fashion of the Government to allow the temples to decay and fill up tanks with the debris of the temples built at great cost and enthusiasm. If we want any great examples of Community Projects and National Extension Blocks and things done by co-operative effort, all these *gopurams* are the monuments of such effort. They had no First Five-Year Plan or the Second Five-Year Plan. Co-operative effort over a period of twenty or thirty years produced all these fine and beautiful things. After the passing of many Acts, and after the formation of the Hindu Religious Endowments Board to look after these things, they are allowed to decay.

“ Now, Sir, we are trying to raise the fee payable by these institutions, from 3 per cent to 5 per cent. The Supreme Court has ruled that this is a tax and not a fee. It is a tax inasmuch as there is some surplus left out of the fee collected. The fee collected must be only for the actual working of the department. The hon. Member, Sri Balasubramanya Ayyar, has pointed out in his dissenting minutes that there is a surplus of 40 lakhs of rupees when the Government have been levying only a fee of 3 per cent. That being so, what need is there to raise the fee from 3 per cent to 5 per cent? Then, in addition to this, we have the usual auditing fee of one and a half per cent. I would submit to the hon. Members of this House that there is no necessity to enhance this fee from 3 per cent to 5 per cent.

“ Then, Sir, even in this Bill, we have a provision regarding *pathakanika*. *Pathakanika* is a gift made to the head of the math with due regard to the sanctity and austere life led by the head of the math. It is a personal gift. All along, the law has treated it only as a personal gift that can be utilized by the head of the math at his discretion for the advancement of the math. There should be no dictation over that. There should be no restriction placed on the utilization of that. There should be no official pressure put on the use of this *pathakanika*. The Supreme Court went to such an extent as to say that the court had no jurisdiction over this *pathakanika* because it has been, is, and must be treated as a personal gift made to the head of the math. Now this *pathakanika* is collected by the Hindu *gurus* from the public. The public go to them and give them this *pathakanika* in due reverence, in due admiration of the qualities of the head of the math. When it is an evident fact that the head of the math is able to get the *pathakanika* only on account of his conduct as head of the math, it is but right that that *pathakanika* should be purely treated as a personal gift over which the Government or the department should have no right whatsoever. When this *pathakanika* has been treated like this, we find a provision made in this Bill that the receipts in respect of *pathakanika* alone need be recorded and not the expenditure. When it has been declared unequivocally that this does not

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come under the regular income of the math, what point is there in our legislating that a separate account shall be kept of the receipts from *pathakanika*? Is it so simple to find out how much money is made by the head of a math by way of *pathakanika*? Is it the object of the Government that if they include *pathakanika* in this Bill, they can include this as a regular item of receipt in the comprehensive Bill that is now under contemplation? Is it with that motive they have included it in this Bill? I should like to have enlightenment on this from the Hon. Minister in charge of the Bill.

"Sir, a solution to all these problems has been indicated by a Member of the Joint Select Committee in his dissenting minute. We can have a statutory board. By all means, let the Government leave it completely to the Hindus. They know how to take care of themselves. This is an age of democracy. Everywhere we find Hon. Ministers and Congressmen crying and preaching democracy. They want that every man should be allowed to take care of himself. They want that every layman should take interest in every project. But why in this matter alone should they curb the planning heads and aiming hands of lakhs and lakhs of people of the Hindu fold from conducting their own affairs, especially affairs connected with their religious life? Religion is a thing which is to be lived up to and not that which is preached. It is what is meant by culture. If a man is a religious man, he is a cultured man. We say one is cultured in so far as he is religious.

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"Now, if we want really cultured men, we must really have men with good habits, and these habits are formed by religion which must be lived up to and not merely preached. If we want men of good habits, God-fearing and loyal people, they must be religious. Religion has had its own growth all these years without any limitation from the Legislature. But we are just trying to poke our nose into the affairs of a particular religion (which may be a majority religion) which affects everybody and particularly lakhs and lakhs of people in this State. In these democratic days, it is better that we leave these things to be settled by men professing that religion. They will not lose their interest and, if the head of a math goes out of the way, there are so many of his disciples to correct him. After all, Sir, the disciples are there to study him at close quarters and they are the best judges. Also, there may be competition even among the disciples to get that place. Therefore, it is better for the Government not to interfere in the affairs of these institutions. As I suggested to hon. Members of this House just now, as a final solution to this problem, a statutory board consisting of the learned men of various sub-sects under the Hindu religion and a few heads of maths may be formed by the Government and the administration of temples and maths may be left to this board. There can be no objection to this proposal unless the Government think that they should interfere in the affairs of religious institutions."

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* SRI K. BHASHYAM :—“ Mr. Chairman, Sir, this Bill seeks to modify and make certain amendments in respect of the Hindu Religious and Charitable Endowments Act passed in 1951. Even at that time, there were many hon. Members of the then Legislature who felt that the Government should not interfere in matters of religion and there were strong objections to it but still the Government went on with all the force at their command to pass that legislation in both the Houses of the Legislature. I think, many hon. Members at that time pointed out that some provisions of the Act were really unconstitutional and should not be passed but the Government was adamant and obstinate and they said that they would go on with it in spite of the advice that has been given to them at that time. So, the matter was taken to the courts and we know what has happened there. The result is that the Supreme Court has declared some sections of the Act *ultra vires* of the Constitution. Now the Government come back to the House not even with an apology for what they have done in spite of advice but for the purpose of—if I may use that expression—‘ getting round ’ the judgment of the Supreme Court. It is somewhat distasteful to use that expression and they also do not use it but they do it all the same. They want to get round the judgment of the Supreme Court in a devious way. This is only a devious legislation for the purpose of getting over the judgment of the Supreme Court.

“ In the first place, I would like to point out that the original Act itself is a cumbersome legislation combining all matters relating to religious institutions, charitable institutions, Hindu and Jain religious institutions and maths. That legislation wanted to combine all the four institutions together in one Act, with the result that the legislation was made so cumbersome and so difficult of application. For instance, the Jains may not like to have Hindus appointed to administer the Jain temples. Therefore, it would have been better if the Government had followed the advice of the people at that time that each class of religious or charitable institution is treated separately and legislated upon. That would have been more satisfactory but they have not done so, with the result they got into trouble with the Supreme Court which declared that ‘ maths ’ are separate class by themselves. Sir, the maths are not ordinary religious institutions. They are all denominational institutions, institutions which are governed by Article 26 of the Constitution which says that denominational institutions shall be managed by the same denomination and the Government or for that matter anybody else have no right to interfere in the affairs of these institutions. The provisions relating to denominational institutions are certainly different and distinct from the provisions applicable to ordinary religious institutions which are denominational in character but only denominational in the sense that they are Hindu temples. Sir, the superstructure of the old Act was bad and therefore we pressed the Select Committee for their being treated separately. The Government, however, were good enough

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to promise that they would look into all these matters and bring in a comprehensive legislation later on by appointing a Committee. But I am not one of those who believe in committees and conferences. At least I am not a believer in committees as are appointed by the Government. After all, these committees and conferences are held to give approval to the proposals made by the Government. Simply because the Government appoint a committee, they feel that the committee must approve the policy of the Government. Sir, if it is a committee of experts presided over by an impartial person, I can accept it but, if it is a committee consisting of Government officials or members of their own and the like, I cannot accept the recommendations of that committee. Now that the Government have come forward with an offer that they will really appoint a committee to go into the whole thing, I think, we can accept the present Bill for the purpose of meeting the situation created by the judgment of the Supreme Court.

“ Now coming to the present Bill itself, I cannot understand the argument of the Government that there is some urgency for it. I would like to know, what is the nature of that urgency? The judgment of the Madras High Court is much more stringent than the judgment of the Supreme Court. Things have been going on all right and nothing has happened and the Heavens have not fallen down and, therefore, there is no urgency in regard to this matter. If the Government are really wise, they can wait for the whole Act to be gone into again by the committee promised by the Government or till separate legislation is brought forward for each institution. Therefore, I cannot see any urgency in respect of this matter. Even if there is urgency for this Bill to meet an emergency, it should confine itself only to meet that situation. As pointed out by my hon. Friend, Sri T. M. Narayanaswami Pillai, this Bill goes beyond and farther than what the Supreme Court has done. The Government cannot justify it by saying that these are not fundamental matters but only matters which affect ordinary things. That is not the way to justify it. The Government must justify it wholly and fully. The Government cannot justify it even though it may be a small matter.

“ Now, I would like in this connexion to refer to Section 21 of the principal Act which deals with the entry into temples. As a matter of fact, it was so stringent that the Supreme Court declared it *ultra vires* of the Constitution.

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“ The Supreme Court said that, if reasonable notice was given and if the practices and usages of the institution were observed, there might not be much of a difficulty in this regard. What they said was of a permissive nature. It was really a sort of ‘left-handed’ permission which they gave. This was in favour of the Government and they therefore took it up and improved on it. The expression ‘shall, if practicable, give notice to the trustee and shall have due regard to the practices and usages of the institution’ in sub-section (3) of the new section 21, takes the whole thing away.

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I am reminded of the olden days when the British Government used to say that Indians would be appointed to higher posts provided they were found to be competent. This Government are also playing the same game as the British Government. What is the point in saying that they follow the directions of the Supreme Court when in giving effect to them the whole force of the arguments of the Supreme Court is taken away? What are the circumstances when it is not possible to give notice? Suppose a murder is committed inside the temple or a theft of the temple properties takes place. There are provisions in the Penal Code to meet such cases. Therefore, there is no need for the words 'if practicable' to be included. I do not see any reason why the Government should really arm themselves and the Commissioner with all sorts of powers. We have been legislating from 1922—even from 1865—for improving the tone of the administration of the temples. Everywhere it has been admitted, even hon. Member Sri T. M. Narayanaswamy Pillai himself would admit it, that there has not been much of an improvement. There might be a number of persons sitting on chairs in front of tables with their hats and boots on and there might be big bound books which contain all the entries relating to the temple. This is all that has taken place. The questions which are of importance are, whether the *poojas* are being performed properly and whether the *archakas* and others are doing their duties properly. Of course, these things depend upon the person who administers the affairs of the temple. If only the Government had accepted my suggestion that only persons who are Hindus and who practise Hinduism should be appointed as such officers, it would have been better. But the Government appoint all sorts of persons, persons who do not feel in the same way as orthodox people feel in respect of temples. If you will excuse me, Mr. Chairman, I feel very strongly over this matter. I know of a particular gentleman who was appointed as Commissioner for a very big temple. I was there inside the temple with him when *prasadam* was being offered. It took a little time and because he had to stand all the time he asked 'What is the necessity for all these things?' 'May I know', Sir, he said 'if God really partakes of the *prasadam* that is offered, is there any privy or a private place for Him?' Let me not be misunderstood. There are exceptionally good Commissioners but not all Commissioners are like that. I know many persons who are really smoking inside the temples and walk about with their boots and hats on. I really know all these and let not anybody imagine that I am not in the know of these things."

SRI M. P. GOVINDA MENON :—"There are matadhipatis also who smoke inside the temples."

* SRI K. BHASHYAM :—"Sir, I would like to inform the hon. Member that I am not speaking about matadhipatis now. What I was criticizing was the attitude of the Government in respect of these religious institutions. They must have more faith, more confidence and more religious feeling in this matter. They should not say that being a secular Government they do not believe in

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religion. They must really believe in religion and appoint only persons who believe in religion. I am only pleading for that. The Government somehow want to get round section 21 of the Act and the words 'if practicable' in regard to giving notice to the trustee is something wonderful in its enunciation because nothing is known about it in our law books.

"Coming to the *cypres* application of surplus funds, hon. Member, Sri T. M. Narayanaswamy Pillai, wanted to know why the surplus funds should not be appropriated for religious, educational or charitable purposes. I quite appreciate it. But, if he himself was in charge of a temple, I am sure, he would not show any surplus. It is really so because these institutions are now growing in importance and in these days of atheism it is necessary that propaganda must be carried on and to make it as effective as possible crores and crores of rupees will be necessary and not merely the small sums that would be left over as surplus. Certainly the Government must come forward to help people become more religious and more truthful in their dealings with each other. If the Government do not do so they will be feeling the effect of it soon. I would appeal to the experience of hon. Member, Sri T. M. Narayanaswamy Pillai, and would ask of him whether the charitable instincts of the people have developed or whether they have gone down since the passing of these Acts. I am told that the fountains of charity have all dried up."

* SRI T. M. NARAYANASWAMY PILLAI :—"Sir, there are many instances where the charitable instincts of the people have taken a shape and form beneficial to the public on the advice and guidance of the Commissioner. It is wrong to think that the Commissioner is a sort of Administrator, pure and simple. It is not as if he passes orders on paper all the time. Very little in that direction is necessary. He is the friend, philosopher and guide who co-ordinates and regulates these institutions."

* SRI K. BHASHYAM :—"Sir, I am glad that hon. Member, Sri T. M. Narayanaswamy Pillai, has all the qualifications of an ideal Commissioner. While in office he made a good Commissioner. Not all Commissioners are like him. I would only ask of him 'What about your colleagues, were they as good as yourself?' Are the persons who are now being appointed as good as himself? We are legislating for all kinds of people and, therefore, let us be careful."

"Coming back to the question of *cypres* application of funds, I think the previous speaker, hon. Member, Sri V. Bhashyam Ayyangar, pointed out that it was possible to create an artificial surplus. I do not wish to say how it could be done lest others adopt it but I have to do so for the sake of argument. There is now an idea that plenty of money is available in the temples and is being wasted on some *tamashas*. Questions are asked as to why there should be *poojas*, why there should be flowers and why there should be *naivedhyams*, etc. Such ideas are being sedulously fostered

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even by persons in authority and sometimes even the Minister in charge says that the money should be set apart for orphanages. Sir, this being a religious matter, I would like to have some more time."

MR. CHAIRMAN :—" Yes, but the hon. Member should not take too much of the time of the House."

SRI K. BHASHYAM :—" Sir, I was saying that originally the policy of the Government was to divert the surplus to orphanages. Under one Minister it was all earmarked for leprosy relief work and in the case of yet another it was all for university education. Therefore, the policy changes with the Government or with the person in charge of the department. What happens is that every Commissioner feels that he is bound to show some sort of a surplus, however artificial it may be, for purposes of contributing to such causes. It is but quite natural and I am not blaming anybody. Anybody in such a position must naturally conform to the policy of the Government and, if he did not do so, he would not be a loyal servant of the Government. As a matter of fact the budget of the institution is controlled and the *dittam* is also controlled. It is rather a complicated question to decide what the surplus is. The new section 31 under clause 3 of the Bill says—

' (1) The Commissioner may, after holding an inquiry in such manner as may be prescribed, by order, declare that, after satisfying adequately the purposes of the religious institution and after setting apart a sufficient sum for the repair and renovation of the buildings connected with the math or the temple or the endowments attached thereto, there is a surplus which is not required for any such purpose, and may, by such order, direct that such surplus as is declared to be available, as the case may be, be appropriated to religious, educational or charitable purposes ; '

Sub-section (2) of this new section 31 says—

' (2) It shall be competent to the Commissioner when giving a direction under sub-section (1) to determine what portion of such surplus shall be retained as a reserve fund for the math or temple and to direct the remainder to be appropriated to the purposes specified in that sub-section.'

How can there be any surplus without providing for a reserve? (Interruption.) Whenever the hon. Member, Sri T. M. Narayanaswamy Pillai, intervenes it is the official in him that speaks and not the true religious man in him that speaks. Even the framers of the Bill had felt great difficulty in finding where the surplus is. In the case of the temples, repairs have to be done at very great cost and in the case of the maths the question of religious propaganda is coming to the fore nowadays. Therefore, there cannot be any surplus. Again, how is this surplus, if any, to be spent? It is said this surplus is to be spent for religious, educational or charitable purposes which may not be connected with the temple or the math or even with the place where the temple or math is situated. I can understand the persons of the locality being benefited by any surplus left over. But, as it is, a temple somewhere in Madurai may be asked to contribute towards scholarships in a girls' school in Myslapore.

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“ Anyhow, I want to point out to the hon. Members of this House the absurdity of adopting the *cypres* doctrine in the matter of disposal of surplus funds of endowments. In case there is a surplus in an endowment, it should only be used for purposes which are very similar to the one for which the endowment is intended. But according to the new section—section 31—provided for in clause 6 of the Bill, if there is a surplus the Commissioner may by an order direct that such surplus may be appropriated to any religious, educational or charitable purposes. This section seems to be absurd and ridiculous. The disposal of surplus funds, if any, must be completely left to the denomination. Supposing in a math the Commissioner declares that there is a surplus fund of one lakh of rupees every year from the income of the math. According to section 31 contained in clause 6 of the Bill, this one lakh of rupees will be distributed all over the State for educational or charitable purposes like opening of technical and professional colleges, opening of colleges for girls, etc. If we approve of this section, it will only come to that. The benefit of the surplus fund in any math must go to the members of the denomination to which the math belongs and it should not be distributed to the various charitable institutions by the Commissioner as stated in this section. By distributing the surplus funds to the various charitable institutions under the orders of the Commissioner, the intentions of the original founders of the endowments are not fulfilled. Of course, it has been provided in this section that the trustees or any other persons interested in the endowment may institute a suit in a Court of law to modify or set aside orders issued by the Commissioner under this section. But fighting in a Court of law involves lot of trouble and fighting with the Government is a very difficult affair. I know the difficulties of fighting in a Court of law. The parties may have to engage an advocate and have to pay a heavy sum as his fees. If the parties incur an expenditure, say Rs. 200, towards fees for the advocate, the Commissioner may later on ask the parties why such a large sum was spent towards payment of fees for the advocate. This is the most mischievous section in the Bill.

“ I do not wish to take more time of the House and tire the Members with my views on the other provisions of the Bill. I wish to make only a few more observations.

“ Clause 10 which amends Section 52 of the principal Act of 1951 gives three more grounds on which the Court may be moved for the removal of the trustee. These grounds are not found in the old Act. The Supreme Court in their judgment have not referred to anything in this section. It is stated that these new grounds have been introduced to prevent waste of funds or properties of religious institutions by the trustee of a math or a specific endowment. Here I may point out that one single instance of wastage of property, as per the provisions of this section, may be enough to displease the Commissioner. Suppose a matadhipati or a trustee of a math wants to present a shawl to a pandit who may not be quite a pandit. The Commissioner may think that it is waste of funds of the math and may institute a suit in a Court to obtain

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a decree for removing the trustee or the matadhipati of the math. At least I can understand it if it has been stated in the section 'persistent and wilful waste'.

"Then according to Clause 11 which substitutes a new section for Section 55 of the principal Act the trustee of a math shall keep regular accounts of receipts of *pathakanika*. If a particular matadhipati or a trustee of the math who is entitled under the Act to spend the said *pathakanika* claims the *pathakanika* as his own, he can only be proceeded against for breach of trust. This new section may be used for harassing the trustees and heads of maths and it is not conducive to their dignity. Again I wish to refer in this connection to amend Section 52 which deals with the powers of the Commissioner to institute a suit in a court for removing the trustee of a math for any one or more of the reasons stated in that section. I am somewhat responsible for the change made in sub-clause (h) of sub-section (1) of Section 52 at the Joint Select Committee. Sub-clause (h) which originally read 'leading a life inconsistent with the sanctity attached to the office of head of the math' was, at my instance, changed into 'leading an immoral life or otherwise leading a life which is likely to bring the office of the head of the math into contempt'. I preferred this as the lesser of the two evils. These are all matters which must be left to the denomination and it is not for the court or for the matter of that even for the Commissioner to interfere in all these matters. I want to point out the danger. Supposing if a previous matadhipati kept only accounts of receipts of *pathakanika* made to him and did not keep accounts of disbursements and a succeeding matadhipati is asked to account for all the receipts of *pathakanika* received by his predecessor he may not be in a position to do so. As per the provisions of this section, he may be charged for breach of trust, for not accounting for all the receipts of *pathakanika* of his predecessor. Perhaps, there will be some sense if it has been stated in the section that the matadhipati shall keep an account of all receipts and expenditure of *pathakanika* received by him. If only a matadhipati is asked to keep accounts of receipts of *pathakanika* alone, his successors are sure to get into trouble. I consider that the original section in the principal Act be left as it is and if a matadhipati claims any portion of the *pathakanika* as his own property he can always be proceeded against for breach of trust.

"With reference to Section 82 contained in Clause 16 of the Bill, I wish to make one or two remarks. This section is not clear. I wrote to the Chairman of the Joint Select Committee to have a further meeting of the Joint Select Committee to consider this particular section but he would not do it as the Bill had already been passed by the Joint Select Committee. This section says:

"82 (1) "Contributions under Section 76 (1) and further sums under Section 76 (2) shall be payable with effect from the commencement of this Act. For the period from the commencement of this Act until the commencement of the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 1954"

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I do not understand what the words 'for the period from the commencement of this Act, until the commencement of the Madras Religious and Charitable Endowments (Amendment) Act, 1954,' mean. I thought that the Government are only validating all contributions levied previously. But it looks as if the Commissioner may ask religious institutions to pay arrears of contributions for a period of three or four years. This will cause a lot of hardship to religious institutions because they would have spent all the money and they would have nothing available to contribute. To say that all these arrears are collectable by attachment of jewels or even properties of *maths* is wrong. I do feel strongly that in all religious matters Government interference should be minimum.

"Government have taken charge of several departments and they have not been able to manage them properly. They have not got the necessary staff to man these departments and administer them efficiently. I ask, why then they should take another department under their control?"

* SRI A. GAJAPATHY NAYAGAR :—“கனம் மன்றத் தலைவர் அவர்களே, ஹிந்துமத அற நிலையப் பாதுகாப்புச் சட்டத்தை எதிர்த்து என் நண்பர்கள் பலர் அடுக்குச் சொற்களில் ஆங்கிலத்தில் பேசிவிட்டார்கள். ஆனால் இச்சட்டத்தின் அவசியத்தை நன்றாகக் கவனித்துப் பார்த்திருப்பார்களாவை இதுமாதிரியாகப் பேசியிருக்கமாட்டார்கள் என்றே எண்ணுகிறேன். ஹிந்துமத அற நிலையங்களும், ஆலயங்களும் எந்தக் கொள்கைக்காக ஏற்படுத்தப்பட்டனவோ அந்தக் கொள்கையைக் கடைப்பிடித்து நடந்து வருவதாகத் தெரியவில்லை. கொள்கைக்கு விரோதமாக அவைகள் நடந்து வருமானால், அவைகளைப் பார்த்து மக்களும் நல்ல கொள்கைகளை விட்டு விடக்கூடும். மக்கள் வாழ்வ நன்றாக இருக்கவேண்டுமென்றால் அவர்களது சமய ஸ்தாபனங்களும் நல்ல முறையில் நடப்பது அவசியம். இந்தக் கொள்கையை அடிப்படையாகக் கொண்டு தான் இந்தச் சட்டமே கொண்டுவரப்பட்டிருக்கிறது. அப்படியானால், இதனால் எப்படித் தீமை உண்டாகும்? சமயப் பாதுகாப்புக்காக ஏற்படுத்தப்பட்ட ஸ்தாபனங்களே சமயத்திற்கு பாதகம் விளைவித்துக் கொண்டு வருகின்றன என்று சொன்னால் அவைகளைத் திருத்த வேண்டியது நம் சர்க்காரின் கடமையல்லவோ, என்பதைப் பார்க்க வேண்டும். இதை அடிப்படையாகக் கொண்டு தான் செக்ஷன் 20 ஏற்படுத்தப்பட்டது. நாம் எவ்வளவோ இடங்களில் பார்த்திருக்கிறோம். கோவில் தர்மகர்த்தாக்கள் யாருக்கும் தெரியாமல் கோவில் நிலங்களைப் பல இடங்களில் விற்றுவிட்டதைப் பார்க்கலாம். மைலாப்பூரிலுள்ள திருவன்ருவ நாயனார் கோயிலுக்கு 120 ஏக்கரா நிலம் இருந்ததாக அறிகிறோம். ஆனால் இன்றைக்கு 1½ ஏக்கரா நிலம் தான் அதற்கு இருக்கிறது. இம்மாதிரி பல கோவில்களின் சொத்து வீணாக்கப்படுவதைத் தடுக்கவே பனகல் ராஜா அவர்கள் நல்ல எண்ணத்தோடு ஒரு பாதுகாப்பு மசோதாவைக் கொண்டு வந்தார்கள். தனியாக ஒரு போர்டை நிறுவி அறநிலையங்களின் நிர்வாகத்தைச் செம்மை படுத்தத் தக்க நடவடிக்கை எடுத்தார்கள். இந்தக் கொள்கை தவறு என்று யாரும் சொல்ல முடியாது. இதன் அடிப்படைக் கொள்கையை ஒப்புக்கொண்டுதான் 1951-ம் ஆண்டுத்திய சட்டம் வந்தது. இந்தச் சட்டத்தில் சில பகுதிகள் செல்லுபடியாகாது என்று ஹைக்கோர்ட் தீர்ப்பு அளித்திருக்கிறது. இப்படி ஹைக் கோர்ட் செல்லுபடியாகாது என்று சொன்ன சில பகுதிகள் செல்லுபடியாகும் என்று சுப்ரீம் கோர்ட் தீர்ப்பு அளித்திருப்பதோடு எந்தப் பகுதிகள் செல்லுபடியாகுமென்று ஹைக்கோர்ட் சொன்னதோ அந்தப் பகுதிகள் செல்லுபடியாகாது என்றும் சுப்ரீம் கோர்ட் தீர்ப்பு அளித்திருக்கிறது. இந்த மாதிரியாக இதில் சில கருத்து வேறுபாடுகள் இருப்பதைக் காண்கிறோம். பொதுவாக இரண்டு விஷயங்களில் தான் இந்தக் கருத்து வேறுபாடு நிலவுகின்றது. அவைகளைப் பற்றி

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இப்பொழுது நேரமில்லாத காரணத்தினால் பொதுவாக நான் சொல்லுகின்றேன். பின்னால் ஷரத்துவாரியாக இந்த மசோதாவைப் பரிசீலிக்கையில் அவைகள் ஒவ்வொன்றைப்பற்றியும் தனித்தனியாகப் பேசுகின்றேன். கணம் நண்பர்கள், ஸ்ரீ பாலசுப்ரமணிய அய்யர், ஸ்ரீ பாஷ்யம் இவர்கள் சொல்லுகின்ற வாதத்திற்கு எல்லாம் நான் விவரமாகப் பதில் சொல்லுகின்றேன்.

“முதலாவதாகப் பாதகாணிக்கையை எடுத்துக் கொள்வோம் பாதகாணிக்கை என்றால் எல்லோராலும் குருவாக மதிக்கப்படுகின்ற ஒரு பெரிய வரின் பாதங்களுக்கு அர்ச்சனை பண்ணும் போது பூவும், பொன்னுமாகச் சேர்த்து அர்ச்சனை பண்ணுவதன் காரணமாக அளிக்கப்படும் பணங்கள் பாதகாணிக்கை என்று சொல்லப்படுகிறது. ஆகவே பாதத்திற்கு வரும் பணம் பாத காணிக்கை ஆகும். அதை விட்டுவிட்டு 5,000 ரூபாய் வருமானம் வரக்கூடிய நிலத்தை 2,000 ரூபாய்க்கு குத்தகைக்கு விடுவதும், இன்னொரு ஆயிரம் ரூபாயைப் பாதகாணிக்கையில் வந்த பணம் என்று சொல்லி கணக்குக் காட்டுவதும் பல இடங்களில் நடைபெற்று வருகின்றது. இதை இல்லையென்று யாரும் மறைத்துப் பயனில்லை. அப்படி இருக்கும் போது பாத காணிக்கை எவ்வளவு வந்தது என்று உண்மையாகக் கணக்குக் காட்டச் சொல்வதில் தவறு என்ன இருக்கிறது என்று தான் நான் என் நண்பர்களைக் கேட்கிறேன். பாதகாணிக்கைகளை அவர்கள் இஷ்டம் போல் செலவு செய்து கொள்ளட்டும். ஆனால் கோயில் சொத்தை எல்லாம் பாத காணிக்கையாக மாற்றுவது தவறு. அதைத் தடுக்கத் தான் சர்க்கார் இதில் ஒரு ஷரத்து போட்டிருக்கிறார்கள். அதை எதிர்ப்பது சரியாகாது.

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“அடுத்தபடியாக முன்பு 3 சத விகிதம் நிர்வாகச் செலவுக்காக ஒவ்வொரு மடத்தின் மொத்த வருமானத்திலிருந்தும் சர்க்கார் பணம் பெற்று வந்தார்கள். இம்மாதிரி இனத்தில் வந்த பணத்தில் ஆண்டு தோறும் 8 லட்ச ரூபாய் செலவு செய்தும் கூட 40 லட்சம் மீதம் வைத்திருக்கிறார்கள். நூற்றுக்கு 3 ரூபாய் வரும்போதே 40 லட்சம் ரூபாய் மிச்சம் ஏற்பட்டது என்றால் பாக்கியிருக்கும் 97% வருமானமும் அந்தந்த ஸ்தாபனங்களிடமே தான் விட்டு வைக்கப்பட்டதே! அவர்களுக்கு ஏற்பட்டு வந்த மிச்சம் எவ்வளவு என்று ஒழுங்காகக் கணக்கு காட்ட அவர்கள் தயாராக இருக்கிறார்களா என்று நான் கேட்கிறேன். அவர்கள் நல்ல முறையில் நிர்வாகம் நடத்திக் கொண்டு வந்திருந்தால் நிச்சயம் மிச்சமிருக்கும். அப்படிச் செய்யவில்லையென்றால் நிர்வாகம் நல்ல முறையில் நடக்கும் படியாகச் செய்வது நம் சர்க்காரின் கடமை. இந்தப் பொறுப்பை சர்க்கார் நிறைவேற்றாத வகையில் தடைபோடுவது சரியல்ல. இதைச் செய்ய 5% பணம் வேண்டுமென்றால் அதையும் எதிர்ப்பதில் பயனில்லை. தர்மஸ்தாபனங்களின் சொத்தைப் பலர் சாப்பிட்டுவருகிறார்கள். சாப்பிடுவதைப் பற்றி நான் ஆட்சேபிக்கவில்லை. (சிரிப்பு.)

“ஆனால் அவைகளின் நிர்வாகமும் நன்றாக நடக்கவேண்டுமென்பது தான் எங்கள் கொள்கை. குறிப்பாக ஒரு உதாரணத்தைச் சொல்லுகிறேன். முன்பு ஒரு வழக்கு கோர்ட்டுக்கு விசாரணைக்கு வந்தது. பத்து பிராமணர்களுக்குத் தினமும் சாப்பாடு போட்டுக்கொண்டு வரவேண்டுமென்பதற்காக ஒருவர் 5 ஏக்கரா, நிலத்தை தர்மம் செய்திருந்தால், அந்தச் சொத்தின் நிர்வாகி அவ்வாறு யாருக்கும் சாப்பாடு போடவில்லை. அந்தக் வழக்கு விசாரணைக்கு வந்தபோது அந்த நிர்வாகி கோர்ட்டில் சொன்னார். “ஐயா! என் குடும்பத்தில் மூன்று பேர்கள் இருக்கிறார்கள். நாங்கள் மூவரும் மூன்று வேளை அந்தச் சொத்தின் வருமானத்தைக் கொண்டு சாப்பிட்டு வருவதால் ஒரு நாளைக்கு ஒன்பது பேர்களுக்கு சாப்பாடு போட்டதாக ஆகாதா? இன்னும் யாருக்கு சாப்பாடு போடவேண்டும்? என்று சொன்னார். (சிரிப்பு). இதைப்போலத்தான் பல இடங்களில் தர்ம சொத்து நிர்வகிக்கப்பட்டு வருகிறது.

“இது மாதிரியாக சரியான முறையில் நடைபெற்று வராத சமய அற நிலையங்களின் சொத்துக்களை துர்வினியோகம் செய்யப்படாத வகையில் பாதுகாக்க வேண்டியது சர்க்காரின் பொறுப்பாகும். அந் நிலையங்களின்

[Sri A. Gajapathy Nayagar]

[12th August 1954]

வருமானங்களை நல்ல முறையில் செலவு செய்யத்தக்க நடவடிக்கை எடுக்க வேண்டியதும் சர்க்காரின் பொறுப்பாகும். இந்தப் பொறுப்பை ஏற்றுக் கொண்டே இந்த மசோதாவை சர்க்கார் கொண்டு வந்திருக்கிறார்கள். அதற்காக நான் சர்க்காரைப் பாராட்டுகிறேன். அதைவிட்டு சர்க்கார் இம் மாதிரியாக மசோதா கொண்டு வருவதால் ஏதோ சமயத்திற்கே, மதத்திற்கே, சமூகத்திற்கே, பெரிய ஆபத்து வந்துவிட்டது போல வீண் கூச்சல் போடுவதில் பயனில்லையென்று சொல்லிக்கொண்டு என் பேச்சை முடித்துக் கொள்ளுகிறேன்.”

4 p.m.

* SRI T. M. DAIVASIKHAMANI ACHARIAR :—“ Mr. Chairman, Sir, I feel I have an inherent right to participate in this discussion because my forefathers were great sinners in having introduced religions in this country, built so many stupendous temples and carved idols for worship and the emancipation of mankind from the sins they have committed. Sir, feeling my grounds secure in this way, I just try to divide the discussion in this Council into two parts, one judicial and the other commonsense. The judicial points have been very elaborately dealt with by the prominent lawyer members and also by one great authority on matters relating to religious and charitable endowments, hon. Member Sri T. M. Narayanaswamy Pillai. I am not therefore going to say anything about its legal aspects. I want to confine myself to taking a few crumbs that have fallen from the table of my previous speakers and I wish to say a few words about the commonsense view of the whole case. Hon. Member Sri G. Krishnamoorthi was so very kind enough to enlighten this House on the various provisions in and violations of the Constitution and he has made it abundantly clear that this secular Government have nothing to do with religious matters at all. But we are now living in an era where this Act had come to stay even previous to the framing of the Constitution. Therefore, Sir, it is too late in the day to rake up that question now, namely, whether the Hindu Religious and Charitable Endowments Act, 1951, is necessary or lawful.

“ Hon. Member Sri G. Krishnamoorthi has dealt with two other important points. He has drawn the attention of the Government to the fact that the surplus money of the temples in the hands of the Board does not go to the renovation of the temples and the debris of these temples and the dilapidated *gopurams* are being thrown into the tanks. Sir, what he says is quite correct. I fully endorse every word of what he has said. Sir, what is the condition of many of the temples in South India? They are in very deplorable state of disrepair. There is no point in merely having an emblem of a *gopuram* as the seal of the State. What is the underlying fun of it, Sir, if it is not a mere eye-wash? When these temples are falling into decay and while they are falling down piece by piece and stone after stone, is it really the Government's intention to honour these temples which have been built by our forefathers?

“ Then, Sir, the hon. Member referred to the *pathakanika* of the *matadhipatis*. The *matadhipathis* occupy a very high and

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sanctified' religious position in our country. In the olden days they were said to be seers of God and they were guiding their disciples to attain salvation. As spiritual *gurus* are therefore entitled to receive the *pathakanikas*. *Pathakanika* is not a mere gift or presentation of money. It is paid to the madathipathis to get from him some mystic incantations such as *Panchaksharam*, *Shataksharam* and *Ashataksharam*. The madathipathis get the disciples near them, cover them with a silk cloth and then initiate the *mantrams*. For that purpose they are reverently paid *pathakanikas*. What right have the Government got to interfere with the right of the madathipathis and get back the *pathakanikas* religiously and lawfully earned by them? I do not know the *usage* obtaining in other countries and I do not know what the usages of other religions are. I am yet to know, Sir, whether the Bishops or the Popes receive any gifts which are accounted for or thrown away to the general public or given away to the ruling powers. Are they not retaining these things as their own? In the same way, we want the madathipathis to have possession of those gifts which they have rightly earned and they will find the right use for them themselves. My hon. Friend Sri K. Balasubramanya Ayyar referred to surplus funds being utilised for education. I do agree with him if he meant that a certain sort of religious education should be imparted without reference to caste, community or religion. Of course, the education that is given must be able to lead the people to attain the highest form of piety and ultimately reach salvation. It is with that object that these maths and institutions have been founded. I do not advocate that English education should be taught in maths or temples. There is the accepted leader of the Dravida Kazhagam who is crying for these *mantrams* to be translated into Tamil and other regional languages. The surplus should be utilized to the full extent for such a purpose.

"Finally, I now come to the vexed question, that is, the renovation of the temples. The renovation of the temples cannot be done in a day and by every man in the street. The section of the community who are the custodians of the temple art are nowhere to be found to-day in our country. My hon. Friend Sri T. M. Narayanaswamy Pillai, an authority on the subject, will bear me out in my statement. There were ever so many traditional architects in this country, and master builders, who have built the monumental temples of Madura, Tanjore and Srirangam. As a head of the industrial section or industrial community I cannot count even five *sthapathis* on my fingers to-day. That is the true state of affairs. If that is so, are the Government going to allow these temples to get into rack and ruins without the chance of their being *shastrically* renovated for years to come? Is it right on the part of a civilised Government to allow ancient and time-defying things to go to dogs? Therefore, what I am saying is that every temple should maintain a school of architecture and they must encourage the offsprings of fast disappearing

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traditional architects by giving them training in the art of temple construction, iconography, idol-making and town-planning. Many savants from the West including Prof. Geddes and Lanchester who have come to our country have admired the layouts of the Tanjore temple, the Kancheepuram temple and other temples. Our people have an inborn knowledge of architecture and we are in this far above the other nations. It is no use amending the Act here and there with the sole aim of filling up the coffers of the Government, restricting entrance to the *sanctum-sanctorum*, etc., I earnestly request the Government to do some substantial work for the welfare of the people and for the welfare of the country and thus preserve the ancient glories of India. That is my fervent appeal to the Government as an industrialist, as an architect and as a man who talks of commonsense and not law. May I, Sir, with your permission resume my seat?"

4-10
p.m.

* DR. V. K. JOHN :—" Mr. Chairman, Sir, this Bill is in keeping with the policy which the Congress Government have followed consistently from the time they took charge of the administration. Sir, it is the cardinal and well accepted principle in any democratic structure of Government that it should not interfere with the freedom of the individual or association of individuals. If the Government look for mismanagement they will find it in the case of every individual and every association of individuals and they will find it not only in Hindu religious institutions but also in churches, mosques and others. (An hon. Member: 'There is mismanagement in Government also'.) Yes, I am coming to it. The greatest mismanagement as far as I can see of funds, of wastage of funds, is in the Government itself. The Government here have been trying for a very long time to control everything, control individuals, control associations of individuals and also to collect some money out of them.

" Sir, the 1926 Act on this subject was revised and consolidated and a fresh Act was passed in the year 1951 after the Constitution came into force on the 26th January 1950. I would like to ask the Government 'Had not the Government advisers to tell them that certain provisions in that enactment which they introduced in the Legislature in 1951 were *ultra vires* of the Constitution?' The matter went up to the Supreme Court and that Court ruled that many Sections of that Act were *ultra vires* of the Constitution and beyond the jurisdiction of this Legislature. Is it not shameful on the part of those who are responsible for bringing in these legislations into existence that they will not consult legal advisers or competent men to find out whether this Act is *ultra vires* of the Constitution or not? I find from the decision of the Supreme Court that even the Advocate-General had to concede in the Supreme Court that certain sections of the Act of 1951 were *ultra vires* of the Constitution and beyond the powers of the Legislature. That being so, what are the Government doing to-day? To-day the Government are going against the spirit and the letter of the Constitution.

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" Sir, Articles 25 and 26 of the Constitution give the power of management of properties to religious institutions and not to the Government. Government now go against this fundamental principle and introduce a Bill many sections of which, I am as positive as it is day time now, will be found to be *ultra vires* of the Legislature when it is taken to a Court. Particularly one provision in this Bill which validates everything will certainly be held *ultra vires* of the powers of this Legislature. How can this Legislature validate the collection of fees under the provisions of another Act which was declared *ultra vires* of the Constitution? I can never understand it. Even a non-lawyer member of this House cannot understand how we can pass a law validating collections made under a law which was declared illegal by the Supreme Court. (An hon. Member: 'They go on collecting the fees.') Yes, the Government persist in collecting the fees. I think it is a grave mistake. I do not know why this Government should not have proper legal advice when they introduce a Bill like this, particularly to carry out the decision of the Supreme Court. When they introduced the 1951 Act, the idea was to collect some money as they wanted some more revenue and the Supreme Court said that the Government were wrong in collecting this fee. Now they have again introduced the very same principle which is an encroachment upon the freedom of religious institutions.

" Sir, I do not say that Hindu religious institutions are all managed well and are managed in the best manner possible. For that matter, Christian institutions and churches are not managed well. So also some of the Muslim institutions. There are also individuals who do not manage their affairs well. The Government themselves are not managing their affairs well. I say, Sir, this is not the way to deal with the Constitution of the country which lays down a principle that the Government cannot interfere with the administration of these religious institutions and their properties. Now the Government want to interfere in everything, control everything, collect taxes as far as possible and also validate collections made already but declared to be illegal by the Court. I say this is wrong. This is not the way a democratic Government ought to function. Is there, I ask, any such stringent provision as this Government have introduced in this Bill, in any other legislation passed in any other part of this country? None whatsoever. Are there not religious institutions in other parts of the country? There are. Nevertheless they have not chosen to introduce this kind of legislation. This Government want to control everything and administer through paid men, through their own officers. The Government collect the fees so that paid men may administer these institutions in the public interest. If the Government are of the view that this expenditure on administration of these religious institutions may benefit a section of the Hindu public, why should they not spend the money from out of the public revenues? Why collect the money from

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the institutions themselves? I do not see why public money should not be utilized for the purpose of administering these institutions.

“ Then, Sir, it is said that we are in a secular State. When the Constitution says that our State shall be a secular State, why should that secular State interfere with the administration of religious institutions? The Government have to-day started with the Hindu religious institutions. To-morrow they will go into the Christian institutions. Then they will go into Muslim institutions and every other institution. I say this control and interference are wrong things to do. If this is not to be merely a House which registers or records Bills that come up before it, I would appeal to the House to reject this Bill. Let us not interfere with the religious institutions. Let them make mistakes. Let there be mismanagement. They will correct themselves. Every one of us makes mistakes. It is a cardinal principle of any democratic Government that they shall not interfere with the freedom of individuals or associations of individuals but allow them to make mistakes, and correct them themselves. May this House consisting of learned persons not try to impose its ideas of morality on other people. Somebody might think a particular thing is right and a particular thing is wrong. Are we going to impose those ideas of morality upon others? There is one important consideration in this matter, Sir. When the historian writes about these institutions, and finds a provision in an Act that the heads of the maths could be removed for immorality, he will certainly come to the conclusion that generally, these heads of maths are immoral persons. Is it a proper thing for the Legislature in this country to make a record in this Bill that the heads of maths and religious institutions are immoral? I protest against this, Sir. The Government ought not to do it at all. If anybody were to write a history on religious institutions, he will surely say: ‘ Here is a legislation passed by both the Houses of Legislature in the year 1954 which assumes that the heads of maths and religious institutions are generally immoral ’. The Government ought not to have mentioned the word ‘ immoral ’ at all in any legislation. I submit, Sir, that from every point of view this Bill ought not to be passed into law because it is an illegal and unconstitutional interference with the freedom of religious institutions to manage their own affairs in their own way. They may manage it ill or well. Would this Government allow the Government of India to interfere with the administration of this State? This Government do not manage everything well. I wish to submit, it is better to leave the religious institutions to manage their own affairs in their own way as they have been doing for thousands and thousands of years. This Legislature came into existence only the other day. But the Hindu religious institutions are existing for thousands of years in this country managing their affairs well. In other parts of India, the religious institutions manage their affairs well and there

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is no interference. But here, the Government interfere by legislation, and control everything because the Government here are following a policy from 1946 of controlling everything, taxing everybody, collecting money from everywhere and wasting it. I say, Sir, this should not be the policy of the Government. I sincerely and seriously protest against it."

* THE HON. SRI B. PARAMESWARAN :—" Mr. Chairman, Sir, the hon. the Deputy Leader of the Opposition was not graceful in saying that we did not take proper legal advice or assistance. Any Government will have to depend upon their legal advisers and any Government is likely to commit mistakes in the legislations they introduce. The Supreme Court and other courts are there to point out mistakes and we come again before the Legislature to remedy the defects. There is nothing wrong in committing some mistakes and correcting them when pointed out by the court. Let not some lawyers monopolise certain privileges and cast aspersions upon the Government.

" Sir, there are only two or three points which struck me as important and within the short time at my disposal, I am afraid, I may not be able to deal with them in detail.

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p.m.

" The only objection raised by the Supreme Court against the contributions is that they should not be merged with the general revenues of the State. In the new Section 81 of the present amending Bill, the Government seek to constitute a separate fund and it shall be utilized only to meet the expenses connected with the services that would be rendered to the Hindu religious institutions by the Government and their officers. It is only with a view to meet this objection of the Supreme Court that this new section has been introduced in the Bill. Therefore, there is no point in hon. Members saying that new clauses are introduced in the Bill. I may assure the House that not a single clause is introduced unnecessarily and my task has been rendered very easy by the effective and telling speech made here by the experienced ex-Commissioner, hon. Member, Sri T. M. Narayanaswamy Pillai. He has explained the implications of all the sections which we are now seeking to amend.

" As regards the objection raised by an hon. Member regarding the validation of the contributions already levied, I may say that unless this is done, considerable administrative difficulties are likely to arise. Therefore, the Government are compelled to validate the contributions already made from the Hindu religious institutions before the passing of this amending Bill.

" Some hon. Members took objections to the insertion of sub-clauses (f) to (h) in Clause 10. This was necessitated by the re-drafting of Section 55 of the principal Act, which deals with the spending of *pathakanika* by the madathipathi. The madathipathi deals with two funds, viz., the funds of the institution and the *pathakanikas* which are his personal gifts. By the modification of Section 52, we are ensuring that a madathipathi does not convert

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what should reasonably be the fund of the institution into *patha-kanika*, and also does not waste the funds for purposes unconnected with the institution or by leading a bad life. Therefore, this modification of Section 52 mentioned in Clause 10 is the natural corollary to the new Section 55 introduced in Clause 11.

" Another provision which, according to another hon. Member of this House, was considered to be not proper is sub-section (5) of Section 76 introduced in Clause 15. This sub-section lays down that if there is any surplus in the Hindu Religious and Charitable Endowments Administration Fund after meeting all the expenses and charges referred to in sub-sections (1) and (2) of Section 76, it shall be lawful for the Commissioner to make grants to poor and needy religious institutions for carrying out repairs and renovation to buildings of the institutions subject to such rules as may be framed by this Government in this regard. There cannot be any valid objection to this provision as it ensures that any surplus that may remain only goes back to the Hindu religious institutions for maintaining them in a state of good repair. We want some funds and it is necessary to renovate and repair temples. Therefore, there is no harm in introducing certain provisions which are not repugnant to the Constitution or which are not against the spirit of the judgment of the Supreme Court or the Madras High Court, if they are intended for the benefit of the worshippers and for those who are connected with the temples. Apart from the explanation which I have just now given, I would like to deal with all matters in detail when I reply to the various amendments proposed in this Bill.

" Sir, the Government are as zealous, earnest and determined as anybody else to see that not only the temples are renovated and repaired but those who are associated with the temples and those who are heads of the temples conduct themselves in a manner befitting the position they occupy. There is no use denying the fact that they are certain heads of temples and maths who may not be up to the mark in their administration. Therefore, we should not hide facts and then say that everybody is all right. The provisions of this Bill will apply only to such of those people whom we may consider to be not conducting themselves in a manner in which they are expected to conduct themselves. Otherwise, they will remain a dead letter.

" With regard to the surplus amount, I do not know why hon. Members should be agitated over it. Only where there is a surplus, the question of its utilization will arise. Otherwise, that question will not arise at all. Therefore, there is no necessity for generating heat in regard to this particular matter. After all, this is a simple Bill trying to amend such of those sections which were declared *ultra vires* of the Constitution by the Supreme Court and the Madras High Court. I am only wondering what amount of difficulty there will be for me to pilot the comprehensive legislation when it is introduced. Hon. Member Sri G. Krishnamoorthi was saying that in the Srirangam temple, some plant had grown in the

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gopuram and it was there for generations together and the Commissioner or the authority in charge of the temple has not cared to look into it. Sir, there are certain things which we can do but for certain other things both the temple authorities and the Government are equally responsible for the small mistakes that may creep in. Every hon. Member here was harping upon the point, viz., the repair and renovation of the temples. How is that to be done? Are the Government in any way less earnest or sincere in maintaining the institutions properly or do they by any clauses in this Bill propose to minimize the importance or the privileges or the powers of the madathipathis or the heads of institutions? Never will we do it, but it all depends on the way in which we interpret certain provisions. I think, everyone who is interested in the welfare of the State and in the rebuilding of our religion and in maintaining the prestige and glory that were attached and are still attached to our temples will view it in a very liberal manner. As I said on the floor of the other House, we want temples to thrive. We want temples to spread knowledge and culture and serve as useful institutions for millions of people in this country."

MR. CHAIRMAN :—" The question is—

' That the Madras Hindu Religious and Charitable Endowments (Amendment) Bill, 1954 (L.A. Bill No. 27 of 1954), as passed by the Assembly, be taken into consideration.' "

The motion was carried.

The consideration of the Bill, clause by clause was then taken up.

Clause 2 was put and carried.

Clause 3.

MR. CHAIRMAN :—" The motion is—

' That Clause 3 do stand part of the Bill.' "

* SRI K. BALASUBRAMANYA AYYAR :—" Sir, in the Hindu Religious and Charitable Endowments Act of 1951, there is a sub-section which states that—

' Nothing in this section shall be deemed to authorize any person, who is not a Hindu to enter the premises or place referred to in sub-section (1) or any part thereof,'

I do not know why this has been omitted in this Bill. Probably the Government thought that because they inserted the words ' shall have due regard to the practices and usages of the institution ' in Clause 3 of this Bill, the said sub-section was not necessary. I do not know exactly why this sub-section was dropped but in cases where an officer is resisted and an appeal is made to the Magistrate having jurisdiction and a Sub-Inspector of Police is requisitioned to render such help as is necessary, some difficulties may arise. I therefore think that the provision in the old Act may remain. After all by retaining it no harm is done nor are we doing anything wrong or repugnant to the provisions in the Bill. I am only

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making a mild submission that this sub-section may be retained and I do not want to put it in such forceful language as to say that it is fundamental and absolutely essential and all that sort of thing. We have got to take note of the fact that the Sub-Inspector of Police or other officer who is requisitioned may sometimes over-step his mark and it is therefore better to have this general safeguarding provision in addition to the clause 'shall have due regard to the practices and usages of the institution'. I therefore move—

'Add the following as new sub-clause (4):—

"(4) Nothing in this section shall be deemed to authorize any person, who is not a Hindu to enter the premises or place referred to in sub-section (1) or any part thereof." "

* SRI T. M. NARAYANASWAMY PILLAI:—"Mr. Chairman, Sir, I wish to second the amendment. I think it is by way of abundant caution that the hon. Member, Sri K. Balasubramanya Ayyar, has brought forward this amendment. It appears to have been omitted in the present Bill for the reason that a clause, 'shall have due regard to the practices and usages of the institution', has been included. This amendment will injure nobody and there is no harm in making it more clear."

MR. CHAIRMAN:—"Amendment moved—

'Add the following as new sub-clause (4):—

"(4) Nothing in this section shall be deemed to authorize any person, who is not a Hindu to enter the premises or place referred to in sub-section (1) or any part thereof." "

* SRI K. BHASHYAM:—"Sir, I like to emphasise this fact with reference to this clause that the Police officer referred to in sub-section (2) of section 21 may read the words 'if practicable' along with the words 'shall have due regard to the practices and usages of the institution.' Though the words 'if practicable' is meant to be read along with the words 'give notice' some Judges may read these words also along with the clause 'shall have due regard, etc.' It is probably safer to have the proposed sub-section added, and I would appeal to the Government to do so."

* SRI G. KRISHNAMOORTHY:—"Mr. Chairman, Sir, I support this amendment. I would like to know whether the permission to enter the premises of a religious institution includes permission to enter the *sanctum sanctorum* also. This provision is intended to help the officers of the Endowments Board or the Police officer referred to in sub-section (2) in the discharge of their duties. As there is every possibility in our secular State of a Police officer being a non-Hindu, I think this amendment is a good one."

THE HON. SRI B. PARAMESWARAN:—"Sir, I have no objection to accept this amendment but I think sub-section (3) covers the point raised. Anyhow, we will look into this question later on when the rules are framed. I would therefore request the hon. Member to withdraw the amendment."

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* SRI K. BALASUBRAMANYA AYYAR :—" Mr. Chairman, Sir, the Hon. Minister has said that this may be included in the rules to be framed. Even, if I were to press the amendment, the Bill would have to go to the other House and they may not accept it."

* SRI K. BHASHYAM :—" Sir, the hon. the Mover of the amendment himself is not very serious about it, because in every case the Council is not treated properly and the Government really bring such Bills at the very end of the session and say that nothing should be done with them here. I do think it is wrong in principle for the hon. the Mover of the amendment to give it up simply because the Bill will have to be sent back to the Assembly and some inconvenience will be caused to the Government thereby. Though I do not wish to advise the hon. the Mover either to withdraw the amendment or not, I wish to say that it is wrong in principle to withdraw the amendment simply because the Bill will have to be sent to the other House."

* SRI K. BALASUBRAMANYA AYYAR :—" Mr. Chairman, Sir, I am not withdrawing my amendment."

MR. CHAIRMAN :—" The question is—

' Add the following as new sub-clause (4) :—

" (4) Nothing in this section shall be deemed to authorize any person, who is not a Hindu to enter the premises or place referred to in sub-section (1) or any part thereof."

The amendment was declared carried.

A poll was demanded and the House divided thus—

Ayes—13.

- | | |
|----------------------------|-----------------------------------|
| 1 Sri N. Annamalai Pillai. | 8 Sri T. M. Narayanaswamy Pillai. |
| 2 " K. Bhashyam. | 9 " K. Balasubramanya Ayyar. |
| 3 " A. Gajapathy Nayagar. | 10 " E. H. Parameswaran. |
| 4 " M. P. Govinda Menon. | 11 " A. Subramaniam. |
| 5 Dr. V. K. John. | 12 " V. V. Ramaswamy. |
| 6 Sri G. Krishnamoorthi. | 13 " P. B. K. Thiagaraja Reddiar. |
| 7 " Mohamed Raza Khan. | |

Noes—11.

- | | |
|-------------------------------------|---------------------------------------|
| 1 The Hon. Sri M. Bhatavatsalam. | 7 Sri K. N. Palaniswami Gounder. |
| 2 Srimathi Mary C. Clubwala Jadhav. | 8 " C. Perumalswami Reddi. |
| 3 Sri T. M. Daiyaskhamani Achariar. | 9 " T. Purushotham. |
| 4 " M. Ethirajulu. | 10 Srimathi R. S. Subbulakshmi Ammal. |
| 5 Srimathi S. Manjubhashini. | 11 Srimathi Jothi Vencatachellum. |
| 6 Sri Mahamed Usman. | |

Neutral—1.

1. Sri V. Bashayam Ayyangar.

Ayes—13; Noes—11; Neutral—1.

The amendment was carried.

Clause 3 as amended was put and carried.

Clauses 4 and 5 were put and carried.

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Clause 6.

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MR. CHAIRMAN :—" The motion is—

' That Clause 6 do stand part of the Bill.' "

* SRI K. BALASUBRAMANYA AYYAR :—" Mr. Chairman Sir, I move the amendment standing in my name, namely,—

" In Section 31, sub-clause (1), after the words " charitable purposes " add the following :—

" in the vicinity of the religious institution, not inconsistent with the objects of the said institution."

" During the general discussion on the Bill, I have already stated my views as regards Section 31 in general and I do not want to repeat them here. The words ' religious, educational or charitable purposes ' adopted by the Government in this section are too wide and cover many objects. The objects for which surplus funds may be spent must be consistent with the original object of the institution. Secondly surplus funds must be appropriated to charitable purposes in the vicinity of the religious institution. Surplus funds should not be appropriated to charitable institutions which are remote from the place in which the religious institution is situated. For example a religious institution may be situated in Rameswaram and its surplus funds should not be appropriated to a charitable purpose in South Kanara district.

" I may also add that this Section 31 is based on Section 47 of the Orissa Hindu Religious Endowments Act, 1939, which the Supreme Court has held to be valid, and not repugnant to the various Articles in the Constitution. Therefore the Government have adopted the same wording in this Section 31 as has been adopted in the Orissa Act. The words ' not inconsistent ' found in Section 47 of the Orissa Act have been omitted in this Section 31. If this amendment is accepted, it will give powers to the Commissioner, who wants to declare a surplus and appropriate it to religious, educational or charitable purposes, to do so for purposes which are consistent with the objects of the institution and at places which are near the vicinity of the institution."

DR. V. K. JOHN :—" I second the amendment."

MR. CHAIRMAN :—" Amendment moved—

' In Section 31, sub-clause (1), after the words " charitable purposes " add the following :—

" in the vicinity of the religious institution, not inconsistent with the objects of the said institution."

* SRI K. BHASHYAM :—" Mr. Chairman, Sir, even when the principal Act was passed I had opposed the cypres application of surplus funds of endowments as wrong. As a lawyer, I consider that it is wrong and as a religious man also I consider that it is wrong. Surplus funds should not be used for purposes other than

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those for which the funds are originally intended. Such appropriation will affect the religious susceptibilities of a large number of people. The result of this will be that all persons who want to give funds for charitable or religious purposes will find themselves in difficulty and they may not do so hereafter. Therefore, Sir, I feel that the Government are well advised to accept the amendment. I am interested in the Government and I want that it should not be defeated at all."

SRI A. GAJAPATHY NAYAGAR :—"கனம் மன்றத்தலைவர் அவர்களே, நான் இந்தத் திருத்தத்தை எதிர்க்கிறேன். இவர்கள் 'விஷ்ணு, விஷ்ணு, என்கிறார்களே தவிர அதன் பொருள்தான் என்னவென்று தெரியவில்லை. ஒரு நல்ல காரியத்தைச் செய்யவேண்டுமென்று ஒப்புக்கொண்டுவிட்டால் அந்தக் காரியத்தை ஐந்து மைல் தூரத்துக்குள் இருக்கும் பிரதேசங்களுக்குத்தான் செய்யவேண்டும் ; பத்து மைல் தூரத்திற்குள் இருக்கும் பிரதேசத்துக்குத்தான் செய்ய வேண்டுமென்று சொல்வது சரியல்ல. அப்படிச் செய்வது சட்டப்படியும் நியாயப்படியும் செல்லாது என்று நான் சொல்லுகிறேன். ஆகவே இதனை நான் எதிர்க்கிறேன்."

THE HON. SRI B. PARAMESWARAN :—"Mr. Chairman, Sir, I do not propose to accept the amendment because it will be restricting the scope of our expenditure. There will be some difficulty also in implementing the objects of this section. Therefore I do not propose to accept it."

MR. CHAIRMAN :—"The question is—

'In Section 31, sub-clause (1), after the words "charitable purposes" add the following :—

"In the vicinity of the religious institution, not inconsistent with the objects of the said institution." "

The amendment was lost.

Clause 6 was put and carried.

Clauses 7, 8 and 9 were put and carried.

Clause 10.

MR. CHAIRMAN :—"The motion is—

'That Clause 10 do stand part of the Bill.' "

* **SRI K. BALASUBRAMANYA AYYAR** :—"Mr. Chairman Sir, I move the amendment standing in my name, namely,—

'In sub-clause (f) of Section 52, before the word "waste" add the words "persistent and wilful".'

"I consider the addition of words 'persistent and wilful' before the word 'waste' necessary. Removal of a *madathipathi* for any one or more of the reasons stated in Section 52 by instituting a suit in the court by the Commissioner is a very great power. Ordinarily in South India in all the various maths, the succeeding head of the math derives his title from the preceding head of the math. Power should be vested with the Commissioner to institute a suit in a Court to obtain a decree for removing the head of the math only in

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cases of grave misconduct by the head of the math, which does not entitle him to be a *madathipathi*. If the House agrees to the addition of words 'persistent and wilful' before the word 'waste', then there shall be some justification for the Court to remove a *madathipathi*. Therefore I make bold to move this amendment."

The amendment was duly seconded.

MR. CHAIRMAN :—" Amendment moved—

' In sub-clause (f) of Section 52, *before* the word " waste " add the words " persistent and wilful " . "

4-50 P.M. THE HON. SRI B. PARAMESWARAN :—" Sir, even at the time of the meeting of the Joint Select Committee, the total omission of sub-clauses (f) and (g) was considered but it was decided not to make any change. The existing provisions in sub-clauses (f) and (g) are adequate. I do not think there is any need to accept the amendment of the hon. Member."

MR. CHAIRMAN :—" The question is—

' In sub-clause (f) of Section 52, *before* the word " waste ", add the words " persistent and wilful " . "

The amendment was carried.

* SRI K. BALASUBRAMANYA AYYAR :—" Sir, I shall now move my next amendment to sub-clause (g), which is as follows :—

' In sub-clause (g) of Section 52, *after* the word " the " and *before* the word " adoption ", insert the words " continuous, persistent and wilful " . '

If this amendment is carried, the sub-clause will read as follows : ' the continuous, persistent and wilful adoption of devices to convert the income of the institution or of the funds of properties thereof into *pathakanika*.' An officer of the Government is first given a warning, then suspended and then only dismissed. But in the case of the *madathipathi*, a very stringent attitude is taken. Therefore, I say that the adoption of the devices to convert the income must be continuous, persistent and wilful. This will make it clear that the *madathipathi* is purposely doing the thing. Of course, there are various other remedies by which these abuses can be prevented. An Executive Officer can be appointed to prevent these things. It is only in cases where the man goes on adopting the devices, the Court should take the extreme step of removing him altogether. Why should this ordinary privilege—I do not wish to call it a privilege but I may call it as ordinary justice—be denied to the *madathipathis*? That is why I press for the inclusion of these words."

DR. V. K. JOHN :—" I second the amendment, Sir."

MR. CHAIRMAN :—" Amendment moved—

' In sub-clause (g) of Section 52, *after* the word " the " and *before* the word " adoption " insert the words " continuous, persistent and wilful " . "

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* SRI A. GAJAPATHY NAYAGAR :—“கனம் மன்றத் தலைவர் அவர்களே, இந்தத் திருத்தத்தை நான் ஆட்சேபிக்கின்றேன். நல்ல ஒழுக்கத்தையும், நல்ல வாழ்க்கையையும் கடைப்பிடித்து மக்களுக்கு நல்ல ஒழுக்கம், நல்ல வாழ்க்கை இவைகளை அமைத்துக் கொடுக்கவேண்டியவர்கள் தப்பாக, ஒழுக்கம் கெட்ட முறையில் நடந்து கொள்வார்கள் என்றால், அதை கவனிக்காமலேயே இருக்கவண்டுமென்று சொல்வதை நான் ஒப்புக் கொள்ளமாட்டேன். சந்திரனுக்கு ஒரு களங்கம் எ ட்டிருல் அது எல்லோர்கண்ணிலும் படும். அதைப் போல் உயர்ந்த ஸ்தாபனத்தில் எல்லோராலும் உயர்ந்தவராக மதிக்கப்படுபவரிடம் ஒரு சின்னக் குற்றம் காணப்பட்டாலும் அது எல்லோருக்கும் நன்றாகத் தெரிந்து விடும். ஒரு சிறிய மனிதன் ஒரு பெரிய குற்றத்தைச் செய்தாலும் கூட அது பிறர் கண்ணில் படாமலிருக்கலாம். ஆனால் பெரிய மனிதன் ஒரு சின்னக் குற்றத்தைச் செய்தாலும் அது எல்லோர் கண்ணிலும் படுவதாடு மட்டுமல்லாமல் அந்தக் குற்றத்தைச் செய்யக்கூடாது என்று தடுக்காவிட்டால் ‘அவரே அந்தக் குற்றத்தைச் செய்கிறார். நாம் ஏன் இந்தக் குற்றத்தைச் செய்யக்கூடாது,’ என்ற எண்ணத்தில் மற்றவர்களும் குற்றம் செய்ய தூண்டுவதாகக் கூட ஆகும். ஆகவேதான் நான் கனம் நண்பர் பாலசுப்பிரமணிய அய்யரின்திருத்தத்தை எதிர்க்கிறேன். அம்மாதிரி குற்றம் செய்தவர்களைத்தான் பதவியைவிட்டு சர்க்கார் நீக்க அதிகாரம் உண்டு என்று சொல்லியிருக்கிறது. இந்த அதிகாரம் இருப்பதாலேயே பலர் குற்றங்களைச் செய்யாமல் நல்லவர்களாகவே நடந்து கொள்ளவும் இதனால் வசதி ஏற்படுமென்று நான் கருதுகிறேன். குற்றம் செய்பவர்களை மத்ததின் தலைவர்கள் என்று சொல்லி காப்பாற்ற முயலக் கூடாது என்று தான் நான் சொல்லுகிறேன்.”

* SRI K. BHASHYAM :—“ Sir, I do not think the amendment is necessary. But I am not opposing it on the same ground as the hon. Member Sri Gajapathy Nayagar. I do so for another reason altogether. The word ‘devices’, which is in plural, carries out the meaning which the hon. the Mover of the amendment has in his mind. To say that he has also included the question of breach of trust is unnecessary altogether. It is said that even if it is a small device, the man can be dismissed. The hon. Member Sri Gajapathy Nayagar says that for a big man even a small matter must be enough for dismissal. It would be very difficult to decide the question whether a particular income is *pathakanika* or not, I would like the hon. Member Sri Gajapathy Nayagar to be a madathipathi! Then only he will realise the difficulties. Suppose a person goes to a madathipathi for the purpose of getting initiation and gives *pathakanika*. Is it to be said that because of the fact that he is the head of the math it is given to him or because of the fact of his getting initiation from the madathipathi? Who is to decide these questions? It is well and good on paper. But how can these questions be decided in a suit between the madathipathi and the Commissioner? That will be the issue before the Court. The amendment seems to be unnecessary, because the word ‘devices’ is already there. If the Government are so advised, they can take away the whole clause altogether.”

* SRI T. M. NARAYANASWAMY PILLAI :—“ Sir, I wish to say a few words. The amendment is unnecessary. The original section corresponded to section 92 of the old Civil Procedure Code. Section 73 of Act III of 1925 was the one which substituted that section for section 92. A madathipathi can be removed for breach of trust. Suppose the Legislature for various purposes goes on

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explaining what it considers to be breaches of trust. There may be one instance or two instances which go to constitute breach of trust. By insisting upon these words, we are only going to fetter the discretion of the Court. We may go on multiplying the number of devices, but still if the Court considers that a person ought not to be removed, all these words will become useless. One device alone may be enough. It is a power which is vested in the Court and that power has been there traditionally under the old section 92. I do not know why these instances should be multiplied. But these words are unnecessary having regard to the history of the section. Even one device may constitute a breach of trust."

5 p.m.

THE HON. SRI B. PARAMESWARAN :—" Mr. Chairman, Sir, as I already stated, there is little difference between clause (f) and clause (g), of sub-section (1) of section 52. This has been very clearly explained by the hon. Member Sri Narayanaswamy Pillai and the hon. Member Sri K. Bhashyam. I oppose the amendment."

MR. CHAIRMAN :—" The question is—

' In sub-clause (g) of Section 52, after the word " the " and before the word " adoption ", insert the words " continuous, persistent and wilful " . "

The amendment was lost.

SRI K. BALASUBRAMANYA AYYAR :—" Mr. Chairman, Sir, I move—

' That sub-clause (h) of Section 52 be omitted. ' "

DR. V. K. JOHN :—" I strongly support the amendment."

MR. CHAIRMAN :—" Amendment moved—

' That sub-clause (h) of Section 52 be omitted. ' "

* SRI K. BALASUBRAMANYA AYYAR :—" Mr. Chairman, Sir, I want that sub-clause (h) of Section 52 should not be there. It should be omitted. That is the effect of my amendment. With all respect to this House I should like to say that there should be some dignity in what we do. Here we give power to the Commissioner to take action against the head of a religious institution for leading an ' immoral life '. How is this to be proved before a Court of law? If this provision is allowed to remain in the Bill, will not thousands and thousands of people take to blackmailing the heads of maths? That is what I want to ask. There might be some discrepancy in the accounting of money or a small act of omission. The next day the head of the math will be dragged before a Court of law and he will be charged with having led an immoral life and all that. This will place the madathipathi in a situation where he will be liable to attacks from all kinds of people. Again the Court also cannot embark upon a general enquiry to ascertain whether the madathipathi

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acted immorally or morally and so on. It is hardly fair to have a provision like this in the Bill. It is against the dignity of the madathipathi. The sub-clause should not be there."

* SRI G. KRISHNAMOORTHY :—" While strongly supporting the amendment moved by the hon. Member, I should like to point out that the hon. the Deputy Leader of the Opposition was right when he said that historians and future readers of history would naturally think that this legislation including such a provision as contemplated in sub-clause (h) was necessitated in the year 1954 as heads of maths had gone to such an extent as to be called immoral. People belonging to other religious faiths will naturally laugh at those who profess the Hindu religion on seeing such a statement being allowed to go into a legislation against the heads of maths held in such high esteem for such a long time. It is not proper for us even to think of making such a provision in an Act of this Legislature."

SRI V. V. RAMASWAMY :—" கனம் தலைவர் அவர்களே, நான் இந்தத் திருத்தத்தை எதிர்த்துப் பேசுகின்றேன். காரணம் என்னவென்றால் நம் மக்களுக்கு நல்ல பண்பு, நல்ல ஒழுக்கம், நல்ல நடத்தை இவைகளை எல்லாம் போதிக்க வேண்டியவர்கள் அறநிலையத் தலைவர்கள் ஆவார்கள். அவர்களே ஒழுக்கம், பண்பு, நடத்தை கெட்டவர்களாக இருந்தால் அவர்களால் நம் மக்களின் பண்பு, ஒழுக்கம், நடத்தை இவைகள் எல்லாம் கெட்டுப் போகாமலிருக்க அவர்களை அப்பீடத்திலிருந்து அகற்றிவிடவேண்டுமென்பது அரசியலாரின் கருத்து. இல்லாவிட்டால், நம் சமயமே அழிந்துபோகக் கூடும். நம் நாட்டுப் பொய்யா மொழிப்புவலர் திருவள்ளுவர் எவைகள் எல்லாம் பஞ்சமாபாதகங்கள், எவைகளை எல்லாம் மக்கள் விலக்கவேண்டுமென்று சொன்னார்களோ அந்தப் பஞ்சமாபாதகங்களை எல்லாம் பல மடத்துத் தலைவர்கள் கூடாமல் செய்து வருவதையும் நாம் பார்க்கிறோம், பேப்பர்களின் வாயிலாகவும் அடிக்கடிப் படிக்கிறோம். ஆகவே இம்மாதிரியாகக் குற்றங்கள் புரிவோர்களை பதவியிலிருந்து நீக்க சர்க்காருக்கு அதிகாரம் இருக்கவேண்டியது அவசியமாகும். இந்த அதிகாரம் சர்க்காருக்கு இருப்பதன் காரணமாக இனிமேலாவது அவர்கள் இம்மாதிரியான குற்றங்களைப் புரியாமல் ஜாக்கிரதையாக இருக்கவேண்டுமென்ற எண்ணத்தை அவர்களுக்கு உண்டாக்கக் கூடும். அதனால் நம் மக்களும், நம் சமயமும் மேன்மையடைய வசதியிருக்கின்றது. ஆகவே சர்க்காருடைய இந்த அடிப்படைக் கொள்கையை நான் ஆதரிப்பதில் அதற்கு எதிராகக் கொடுக்கப்பட்டிருக்கும் திருத்தத்தை எதிர்ப்பதோடு சபையோர் இதை ஏற்றுக்கொள்ளக் கூடாது என்றும் கேட்டுக் கொள்ளுகிறேன்."

* THE HON. SRI B. PARAMESWARAN :—" Mr. Chairman, Sir, the provision in the Bill as published was : ' leading a life inconsistent with the sanctity attached to the office of head of the math '. The Joint Select Committee wanted to simplify this phrase and substituted the expression ' leading an immoral life or otherwise leading a life which is likely to bring the office of head of the math into contempt '. The trustee of the math is expected to lead a life consistent with the office he holds. This was one of the clauses which was discussed at length by the Joint Select Committee. Therefore I do not accept the amendment."

[12th August 1954]

MR. CHAIRMAN :—" The question is—

‘ Sub-clause (h) of Section 52 be omitted.’ ”

The amendment was put and lost.

Clause 10 as amended was put and carried.

MR. CHAIRMAN :—" Consideration of Clause 11 will be taken up tomorrow. The House will now adjourn and meet again at 2-30 p.m. tomorrow.”

The House adjourned to meet again at 2-30 p.m. on Friday, the 13th August 1954.

V.—PAPERS LAID ON THE TABLE OF THE HOUSE.

1. Notification No. 327 issued with G.O. Ms. No. 1263, Home, dated 3rd May 1954, regarding exemption of motor vehicles registered and kept in Andhra State from payment of the tax for a quarter payable under the Madras Motor Vehicles Taxation Act, 1931 (Madras Act III of 1931).

2. Notification No. 221 issued with G.O. No. 778, Home, dated 24th March 1954, regarding amendment to Home Department Notification No. 359, dated 29th March 1938, under the Madras Motor Vehicles Taxation Act, 1931, published at page 2 of the Fort St. George Gazette Extraordinary, dated 29th March 1938.

3. Notification No. 222 issued with G.O. No. 778, Home, dated 24th March 1954, regarding amendment to Home Department Notification No. 801, dated 28th June 1938, under the Madras Motor Vehicles Taxation Act, 1931, published at page 948 of Part I of the Fort St. George Gazette, dated 28th June 1938.

4. The Madras Public Service Commission Regulations, 1954, issued with G.O. No. 650, Public (Services), dated 5th May 1954 [Laid on the table under Article 320 (5) of the Constitution of India].

5. Notification issued with G.O. Ms. No. 1574, Home, dated 29th May 1954, regarding Rule amending schedule to the Madras Motor Vehicles (Taxation of Passengers and Goods) Act, 1952.

6. Notification issued with G.O. Ms. No. 1206, Home, dated 28th April 1954, regarding Rule amending schedule to the Madras Motor Vehicles (Taxation of Passengers and Goods) Act, 1952.

7. Notification No. 433 issued with G.O. No. 1659, Home, dated 8th June 1954, regarding exemption of motor car MSY 0130 belonging to the Consul for France at Madras from the Madras Motor Vehicles Taxation Act, 1931.

8. Notification No. 500 issued with G.O. Ms. No. 1904, Home, dated 28th June 1954, regarding continuance of concessional rates of tax in respect of motor vehicles plying solely within the limits of erstwhile Pudukkottai State.